This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

HARVARD
COLLEGE
LIBRARY

Sarah

LADY HEWLEY'S CHARITIES.

A FULL REPORT

OF

THE HEARING IN THE HOUSE OF LORDS,

ON THE 13th, 14th AND 15th OF MAY, AND THE 24th, 25th, AND 28th OF JUNE, 1839.

ON THE

APPEAL OF THE TRUSTEES.

(FROM THE SHORT-HAND NOTES OF MESSRS. GURNEY AND SON.)

TO WHICH ARE PREFIXED,

THE JUDGMENT OF THE VICE-CHANCELLOR, ON THE ORIGINAL HEARING OF THE CAUSE BEFORE HIM, DEC. 23RD, 1833.

THE JUDGMENT OF LORD LYNDHURST ON THE APPEAL TO HIM AS LORD CHANCELLOR, DELIVERED 5TH FEB., 1836.

THE CASE OF THE APPELLANTS.

THE CASE OF THE RESPONDENTS.

LONDON:

PRINTED BY R. AND J. E. TAYLOR, RED LION COURT, FLEET STREET.

SOLD BY SMALLFIELD AND SON, AND GREEN, NEWGATE STREET; AND MARDON, FARRINGDON STREET.

1839.

Soc 2115.4

1871, Oct. 4.
Gift of
Wm. Browning Garnett,
of Boston.
(N.26.1860.)

7A00
7A

CONTENTS.

JUDGMENT OF THE VICE-CHANCELLOR, on the Original Hearing of the Cause before him, December 23rd, 1833.... i

JUDGMENT OF LORD LYNDHURST, on the Appeal to him as Lord Chancellor, February 5th, 1836..... viii

THE CASE OF THE APPELLANTS (the Trustees) xxvi

THE RESPONDENT'S CASE lxxv

THE ARGUMENT BEFORE THE HOUSE OF LORDS:

The *Attorney-General* on behalf of the *Appellants*,
First day (Monday, 13th May, 1839) 1
Same, 2nd day..... 49

The *Solicitor-General* (Tuesday, 14th May)..... 58

Mr. *Knight Bruce* on behalf of the *Respondents*, 3rd day, (Wednesday, 15th May)..... 103
Same, 4th day, (Monday, 24th June)..... 136

Mr. *Kindersley*..... 182
Same, 5th day, (Tuesday, 25th June)..... 194

The *Attorney-General* in *reply*..... 218
Same, 6th day, (Friday, 28th June). 241

The *Six Questions* submitted by the House of Lords to the Judges 262

COPY.

"*Substance of the* JUDGMENT *delivered Dec.* 23, 1833, *by His Honour the Right Hon. Sir Lancelot Shadwell,* VICE-CHANCELLOR *of England, in the case of the Attorney-General* v. *Shore, as to the construction of the Trust-Deeds of Dame Sarah Hewley, deceased.*—[*as*] *Printed by permission of the Vice-Chancellor.*"

HIS HONOUR, immediately after Sir Edward Sugden's reply, delivered his judgment as follows:

Before stating my opinion upon the trust, I must first of all say, that I should be extremely sorry if any person entertained an opinion that I thought harshly of the Unitarians as a body; because it has happened to me to have had intercourse with various persons, from the earliest part of my life, and whom I have known for many years, who are of that persuasion, and with whom I have lived with great cordiality and friendship; but it does not appear to me that the question in this case to be determined is, whether they were properly called Christians or not; but whether it was consistent with what appeared on the trust-deeds of Lady Hewley, having regard to such evidence as had been produced of what her sentiments were, that the Unitarians could be allowed to participate in the benefit of her charity; she having stated, that the first trust was for "poor and godly preachers, for the time being, of Christ's holy Gospel;" and then repeating phrases which evidently showed that she alluded to the same sort of persons who might happen to be widows of persons, or exhibitioners, and so on, as would fall under the first denomination.

The will of Sir J. Hewley has been put in, which commenced with the following words:—"This is the last will and testament of Sir J. Hewley, who being, of God's mercy, of perfect memory, and so on, first committing my spirit to God who gave it, hoping to find mercy to me a sinner, and to be saved only by the merits and mediation of Jesus Christ, my alone Saviour and Redeemer." I must here remark the manner in which the will was witnessed—"Witness my hand and seal, 24th of June, in the year of our Lord God 1682;" and therefore I consider that the will testified, from the beginning to the end, his belief in the divinity of the Redeemer.

I must now refer to the words of the will of Mrs. Sarah Hewley:—"I, Dame Sarah Hewley, widow, having first committed my immortal soul into the hands of my Redeemer, to be washed in his blood, and made meet to be partaker with the saints," &c.; she then proceeded to make her will. The natural inference from this will was, that she not only believed in the divinity of the Redeemer, but looked for salvation through his merits, in that sense in which the Church of England understood that he was the Redeemer,—"that he had paid the price," and that for the price which he had paid, God would be pleased to forgive the sins of all that turned unto him.

The next document is the will of Dr. Colton: he also had used similar phrases:—"I commit my immortal soul into the hands of Almighty God, my Creator, and which I beseech him mercifully to look

VE RI TAS

HARVARD
COLLEGE
LIBRARY

COPY.

"*Substance of the* JUDGMENT *delivered Dec.* 23, 1833, *by His Honour the Right Hon. Sir Lancelot Shadwell,* VICE-CHANCELLOR *of England, in the case of the Attorney-General* v. *Shore, as to the construction of the Trust-Deeds of Dame Sarah Hewley, deceased.*—[*as*] *Printed by permission of the Vice-Chancellor.*"

HIS HONOUR, immediately after Sir Edward Sugden's reply, delivered his judgment as follows:

Before stating my opinion upon the trust, I must first of all say, that I should be extremely sorry if any person entertained an opinion that I thought harshly of the Unitarians as a body; because it has happened to me to have had intercourse with various persons, from the earliest part of my life, and whom I have known for many years, who are of that persuasion, and with whom I have lived with great cordiality and friendship; but it does not appear to me that the question in this case to be determined is, whether they were properly called Christians or not; but whether it was consistent with what appeared on the trust-deeds of Lady Hewley, having regard to such evidence as had been produced of what her sentiments were, that the Unitarians could be allowed to participate in the benefit of her charity; she having stated, that the first trust was for "poor and godly preachers, for the time being, of Christ's holy Gospel;" and then repeating phrases which evidently showed that she alluded to the same sort of persons who might happen to be widows of persons, or exhibitioners, and so on, as would fall under the first denomination.

The will of Sir J. Hewley has been put in, which commenced with the following words:—"This is the last will and testament of Sir J. Hewley, who being, of God's mercy, of perfect memory, and so on, first committing my spirit to God who gave it, hoping to find mercy to me a sinner, and to be saved only by the merits and mediation of Jesus Christ, my alone Saviour and Redeemer." I must here remark the manner in which the will was witnessed—"Witness my hand and seal, 24th of June, in the year of our Lord God 1682;" and therefore I consider that the will testified, from the beginning to the end, his belief in the divinity of the Redeemer.

I must now refer to the words of the will of Mrs. Sarah Hewley:—"I, Dame Sarah Hewley, widow, having first committed my immortal soul into the hands of my Redeemer, to be washed in his blood, and made meet to be partaker with the saints," &c.; she then proceeded to make her will. The natural inference from this will was, that she not only believed in the divinity of the Redeemer, but looked for salvation through his merits, in that sense in which the Church of England understood that he was the Redeemer,—"that he had paid the price," and that for the price which he had paid, God would be pleased to forgive the sins of all that turned unto him.

The next document is the will of Dr. Colton: he also had used similar phrases:—"I commit my immortal soul into the hands of Almighty God, my Creator, and which I beseech him mercifully to look

upon, not as it is in itself, polluted with sin, but as it is redeemed and purged with the precious blood of his only beloved Son, and my most sweet Saviour Jesus Christ, in confidence of whose merits and mediation alone it is that I cast myself upon the mercy of God, for the pardon of my sins and the hope of eternal life." He, it was to be remarked, was one of Lady Hewley's trustees, and was the person that preached at St. Saviour's Chapel, where she attended during her life, and he preached her funeral sermon.

Then, looking at the words of the deed, I am necessarily driven (inasmuch as the rules were directed by the deed to be observed) to a consideration of Bowles's Catechism, which, according to the rules, the poor almspeople were directed to repeat; and for the purpose of determining the question before me, I am bound, not merely to consider the questions and answers, but also the texts in the margin, which are manifestly referred to in support of the answers. One question was—"What was the sin of our first parents?—Eating the forbidden fruit. What was the fruit of that eating?—It filled the world with sin and sorrow. In what condition is the posterity of our first parents born?—In a sinful and miserable condition." That last answer comprehended all the posterity of Adam. "Wast thou born in that condition?—Yea, I was conceived in sin, and am by nature a child of wrath, as well as others. What is Jesus Christ?—The Son of God manifest in the flesh." Now that answer referred to that very singular verse at the end of the third chapter of St. Paul's Epistle to Timothy, which, according to the translation of the Scripture used at that time, could not leave a doubt in the mind of any person as to the divinity of the Redeemer, because, according to the received translation, it was put in this way:—"And without controversy great is the mystery of godliness; God was manifested in the flesh, justified in the spirit, seen of angels, preached unto the Gentiles, believed on in the world, received up into glory." Now, no man could doubt that this text was intended to convey the only conclusion that could be formed, which was, that not merely the office and mission of our Saviour were divine, as stated in the answers of the defendants, but that his person was divine.

It then went on in another part—"In what order doth God work faith by the word?—First he shows men their sins, and then their Saviour. Why does he observe this order?—That Christ may be the more precious to the soul. How doth faith work love?—It lays hold upon the infinite love of Christ, and works a mutual love in us." Now that expression, "the infinite love of Christ," of necessity conveyed the notion that he was divine, for none but a divine being could have infinite love. Persons might appeal to their own common reading and observations of what passed every day, and I appeal to the testimony given before the committee of the Lords and Commons upon the state of Ireland, for proof of this proposition, that the Presbyterians do hold that the only effectual view of religion, for the purpose of softening the hearts of men, and turning them to God, is the view of the Father's love in sending his Son to appear upon earth and suffer as a man. That was the very view which was taken by a pious Presbyterian minister, who was examined with regard to the *Regium Donum* at Belfast.

Now the first donation in Lady Hewley's trust was to "poor and godly preachers of Christ's holy Gospel." I cannot but suppose, as she

was not a Conformist, that she did mean those persons, not being members of the Church of England, who did entertain, among others, the firmest belief in the divinity of our Redeemer's person, in the necessity of the sacrifice he made, because of the universality of sin, commonly called original sin; and that she would, as Sir Edward Sugden has stated with great propriety, have shaken with horror at the notion of her charity being given to the sustenance of persons, who not only disbelieved these two doctrines, but who actually preached against them. It has also been argued (and I must say I do not remember a case which has been argued with more ingenuity and ability by all the members of the bar concerned in it), that the principal object of this lady was to support poor ministers, widows of poor ministers, and the other persons included in her trust-deed, who would themselves be the supporters of what was called the great doctrine of the Presbyterians—that sort of unrestrained method of disseminating the faith which would not submit to be bound by any test or creed, or by anything except the words of Scripture.

Now, the book mentioned in the Catalogue of Books at the end of the Sixth Report of the Unitarian Society, which was called an Improved Version of the New Testament, afforded a strong inference that persons who would assist the publication of it cannot come under the description of "poor and godly preachers of Christ's holy Gospel," even according to the view which had been taken of those words by the defendants' counsel. Surely it is immaterial whether a creed is expressed in a form of words, or whether a thing called a translation is propounded to mankind which refuses to give the literal sense of words, and in lieu of words expressing the literal sense of the words in the original text, substitutes other words. Where the literal meaning of a word was doubtful, translators might place one word in the text of the translation and another in the margin, in order that a choice might be made; and many cases may be imagined in which the idiom of the English language would not permit the literal rendering of word for word from the Greek or the Hebrew; but where persons had obviously and systematically gone out of the plain way, and had chosen not to give the literal meaning, but to give an assumed and arbitrary meaning, for the purpose of misleading the ignorant reader, those persons must be considered as in effect imposing a creed upon the reader, and not giving him the benefit of judging for himself by means of the pure word of Scripture. I make this observation in consequence of the translation given in that book of the first chapter of the Epistle of Paul to the Hebrews: for it appears most clearly, that the persons who composed the translation did not intend, when they made what they called a translation, to render that first chapter literally, but did intend to infuse a creed. A comparison of the text in Griesbach* with the new version would make this plain. The text began thus: πολυμερῶς καὶ πολυτρόπως πάλαι ὁ Θεὸς. And the translation was—"God, who in several parts and in several manners formerly spake to our fathers by the prophets." Now, I do not mean to say that they have not translated the word πολυμερῶς properly; it might refer to many parts of space, or many parts of time. Our authorised translation was "God, who at sundry times." These new trans-

* The edition of Griesbach alluded to was the octavo London edition of 1809; and the edition of the Improved Version alluded to was the duodecimo edition of 1819.

lators, however, thought proper to give themselves the character of extreme accuracy, by not adopting that which was good enough, but apparently selecting something which they thought better. The translation then proceeds: "In the last of these days hath spoken to us by his Son, whom he hath appointed heir of all things, for whom also he constituted the ages." Now, the words in the original were (according to Griesbach)—*δι' οὗ καὶ τοὺς αἰῶνας ἐποίησεν.* Feeling themselves, therefore, a little pushed hard when they translate *δι' οὗ* "for whom," they have recourse to a note, by which it appeared that two or three persons had fancied that might be the proper translation. Supposing it to be so, it appeared to show a very great intention to be extremely correct, though it certainly was not the received translation; nor do I think that any Greek scholar, unless he were previously biased in favour of a particular theory, would dream that such was the proper translation. The original text then proceeds:—*ὃς ὢν ἀπαύγασμα τῆς δόξης, καὶ χαρακτὴρ τῆς ὑποστάσεως αὐτοῦ.* And what was the pretended accurate translation of these words? "Who being a ray of his brightness, and an image of his perfections"—*χαρακτὴρ τῆς ὑποστάσεως αὐτοῦ,* an image of his perfections!!! I was perfectly astonished, and could hardly have conceived it possible, before I had read it, that any person could have ventured to call this an improved version of the Scriptures which has rendered the word *ὑποστάσις* "perfections." It was perfectly plain, in that passage, the parties never meant to give a translation, but that they meant to fetter the understanding of the reader by imposing their creed in the shape of a translation. They then said—"and ruling all things by his powerful word,"—*φέρων τε τὰ πάντα τῷ ῥήματι τῆς δυνάμεως αὐτοῦ.* They might as well have said, "by the word of his power;" but they did not choose to give the literal translation; they chose rather to substitute words of their own, which might express the sense, but which, it was quite clear, did not express the literal meaning. To this they annex a meagre note, in which they first give their view of the meaning of the words, and then add the literal translation from the Greek. The translation then proceeds: "for to which of those messengers spake God at any time, Thou art my Son, this day I have adopted thee?" The passage they meant to translate was, *τίνι γὰρ εἶπέ ποτε τῶν ἀγγέλων, Υἱός μου εἶ σύ, ἐγὼ σήμερον γεγέννηκά σε*; there was not the slightest pretence to translate the word *γεγέννηκα* "I have adopted."

The defendants' counsel had read passages from Locke's Essay on the Reasonableness of Christianity, in which he states, that by the terms "Son of God" the Jews understood the Messiah. And so they did: for in the second Psalm it is said, "The rulers take counsel together against Jehovah, and against his Messiah." And shortly afterwards: "I will declare the decree: Jehovah said unto me, Thou (art) my Son; this day have I begotten thee." The word in the Hebrew which thus represents something incomprehensible with regard to the Divine nature, but which of necessity conveys to the human mind the notion of the relation that subsists between Father and Son, is uniformly translated in the Septuagint by the word *γεγέννηκα* when applied to a father. It is the word which several times occurs in the fifth chapter of Genesis, in which there was a detailed account of the births of all the antediluvian patriarchs given in succession: the very verb used in the second Psalm was the verb used in that chapter, and the word used in the Septuagint was quoted by St. Paul.

The gentlemen who had translated the Unitarian Testament had made it plain on the face of it that they meant to estsblish a doctrine, that our Saviour was not begotten in that sense in which the term was taken by the Church of England, and by the orthodox Dissenters as they were called, to signify some divine operation, by means of which the nature of the Redeemer was the same as that of the Father. That they meant to oppose. And for the purpose of avoiding the inference which might be made in the mind of an unlearned reader, they wilfully altered the word, and substituted a creed instead of a translation. And it is to be observed, that with respect to these important words, for the first time obtruded on the notice of the world, " an image of his perfections," and " adopted," the translators have not thought it right to add a note, or give the least hint to the unlearned reader that the translation is at all unusual, or in the least degree doubtful; though the notes upon the words " for whom" and " his powerful word," and the singular expression " in several parts," would induce an unlearned person to think that the new translators were minutely scrupulous and fastidiously accurate, and he would put confidence in them accordingly. The translation then goes on: " And let all the messengers of God pay homage to him; and of these messengers *the Scripture saith*." Now, it was to be observed, that here the words " the Scripture" were both in *italics*, as they ought to be if they were introduced at all, because there were no words corresponding with them in the original. The word " saith" evidently referred, as it appeared from their own translation, to God; but they chose to vary the phrase by saying first, " *God saith*," and then " the Scripture saith," which seems an alteration not only without any necessity, but totally unjustifiable. Then they said, " And of these messengers the Scripture saith, Who maketh the wind his messengers, and flames of lightning his ministers." It is truly astonishing to find such a translation as " flames of lightning" given to the words πυρὸς φλόγα, which could not admit of that translation. It might be said that was what was intended, but certainly that was not said. They translated, " God is thy throne for ever and ever; a sceptre of rectitude *is* the sceptre of thy kingdom;" and it might perhaps be true that that translation was right, though the commonly received translation is apparently less forced and more natural; but there was this observation to be made upon it—that they had introduced in the mode of printing, as it stood in their version, the first word " is" not in *italics*, and the second word, " *is*" in *italics*. The unlearned reader would therefore, of course, consider the first word " is" as the rendering of a word found in the original text, and the second word " *is*" as a word supplied by the translators, there being no corresponding word in the original text. If in the original, either of the Hebrew or Greek text, there were a word corresponding with " is" between the words corresponding with " God" and " thy throne," it would be difficult to avoid adopting the new translation. But there is not any such word either in the Hebrew or in the Greek. Here, then, is an attempt to support a translation altogether novel by an interpolation totally unauthorised.

There is but one more observation to be made on the translation. The new translators having in the first instance translated the passage, Ὁ ποιῶν τοὺς ἀγγέλους αὐτοῦ πνεύματα, " who maketh the winds his

messengers," said at the end "are they not all servants?" by way of translating οὐχὶ πάντες εἰσὶ λειτουργικὰ πνεύματα; supposing them to be right in the first instance in translating it "winds his messengers," it was clear they ought in the latter part to have said "are they not all ministering winds?" (λειτουργικὰ πνεύματα), to be consistent with themselves: at any rate, if they thought proper to change the phrase, and translate the word πνεύματα "wind" first, and afterwards "spirits," they should have translated it "ministering spirits," which would have the sense of servants; but still it would be a correct translation, which theirs was not. I have taken this as a specimen of the whole; I have looked at a variety of passages, and I do not remember to have seen any translation which could be considered more unsatisfactory, more arbitrary, more fanciful, more foolish, and, I am sorry to say, more false, than this thing called by the Unitarians an improved version; and sure am I, that Lady Hewley would have thought it the worst calamity that could have happened to her, that persons should be considered entitled to participate in her charity, professing to call themselves "godly preachers of Christ's holy Gospel," who would give their sanction to the publication of such a work as that. For the reasons I have assigned, she would, if the matter had been duly explained to her, have seen that it militated against that principle which the defendants' counsel said was the principle on which she desired her charity to be administered—namely, the principle of free discussion, without creed, and by appealing only to the Scriptures as they stood.

There is a vast number of other passages; but it is perfectly useless to go through them. One remark, however, may be made upon the criticism of the new translators. They print in italics the latter part of the first, and the whole of the second chapter of St. Matthew, and the whole of the second chapter, and all the first chapter of St. Luke, except the four first introductory verses; and this they do, as they tell us, in the notes in p. 2, and p. 111, because those chapters and parts of chapters are to be considered as of doubtful authority, though they are to be found in all the manuscripts and versions which are now extant. In the progress of improvement, it may be discovered, that no parts of Scripture are genuine and authentic, except the first verse of Genesis and the last of Revelation; and, according to the argument for the defendants, the preachers upon those two verses only might still be considered, as godly preachers for the time being of Christ's holy Gospel, within the intent and meaning of Lady Hewley's trust-deeds. I find, by the evidence, that Mr. Wellbeloved and Mr. Kenrick, and some third trustee, were subscribers to the institution called the Unitarian Society, which enumerated amongst the books it circulated this improved version of the Scriptures, as it was called; and my opinion is, that the question being, not who should participate, but what given individuals should be excluded, it is satisfactorily made out that no person who believes as Mr. Wellbeloved has stated in his sermon he believes, or who acts as Mr. Wellbeloved has acted with regard to supporting that Unitarian Society which had published such a book as the Improved Version, could be considered as entitled to share in the charity of Lady Hewley.

Therefore I think it clear, that no stipend ought to be continued to Mr. Wellbeloved, or to any person preaching the doctrines he does; and it is also clear, that the charity itself cannot be administered according

to the intention of Lady Hewley, at least there is no reasonable security that it can be administered according to her intention, if it is allowed to remain in the hands of persons who thought as he did, and who had acted as he had. I have no evidence whatever to induce me to believe that he had anything to do with the Improved Version, more than in assisting by his subscription the publication of it; nor have I ever heard, nor have I the slightest conception, who were the fabricators of the book; but I am quite certain Lady Hewley never would have thought this book did contain Christ's holy Gospel, or that the persons who disseminated this book were to be considered disseminators of Christ's holy Gospel.

Therefore, my decree must, in substance, declare, that NO PERSONS WHO DENY THE DIVINITY OF OUR SAVIOUR'S PERSON, AND WHO DENY THE DOCTRINE OF ORIGINAL SIN, AS IT IS GENERALLY UNDERSTOOD, ARE ENTITLED TO PARTICIPATE IN LADY HEWLEY'S CHARITY; AND THAT THE FIRST SET OF TRUSTEES MUST BE REMOVED.

It is sufficiently manifest that this lady never intended that there should be trustees of one sort to administer the dealing out of the funds amongst the persons who were named in the first deed, and trustees of a second sort to superintend the hospital which contained the poor almswomen.

I therefore think, that ALL THE TRUSTEES WHO ARE DISSENTERS AND DENY THE DOCTRINE OF OUR SAVIOUR'S DIVINE PERSON, AND THE DOCTRINE OF ORIGINAL SIN, MUST BE REMOVED; AND THOUGH THERE IS NO OBJECTION PERSONALLY TO MR. PALMES, YET AS IT APPEARS THAT HE IS A MEMBER OF THE CHURCH OF ENGLAND, HE OUGHT NOT TO BE CONTINUED A TRUSTEE.

JUDGMENT *of the Right Hon.* LORD LYNDHURST, *(late Lord Chancellor,) assisted by Mr. Baron Alderson and Mr. Justice Patteson, delivered at Gray's-Inn Hall, Friday, Feb.* 5, 1836. [*Taken in Short-hand by Mr. Gurney.*]

Mr. Baron ALDERSON.—My Lord, my Brother Patteson and myself having fully considered this Case, in which your Lordship has desired to have our assistance, and having entirely concurred in one view of it, it becomes my duty to deliver our joint opinion, together with the reasons by which we think it may be supported.

This question arises out of certain Deeds of Endowment executed by Lady Hewley, dated 12th and 13th January, 1704, by which she conveyed considerable Estates in the County of York to Trustees upon trust, after her death to pay and dispose of such sums of money yearly or otherwise to such and so many poor and godly preachers for the time being of Christ's Holy Gospel, and to such poor and godly Widows for the time being of poor and godly preachers for the time being of Christ's Holy Gospel, at such time or times and for so long time or times, and according to such distributions as said Trustees and Managers for the time being, or any four or more of them, should think fit; and to employ and dispose of such sums of money, and in such manner for the encouraging and promoting of the preaching of Christ's Holy Gospel in such poor places as the said Trustees and Managers for the time being, or any four or more of them should think fit; and also to employ and dispose of such sums of money yearly or otherwise as and for exhibitions for such or so long time or times for or towards educating of such Young Men designed for the Ministry of Christ's Holy Gospel, never exceeding five such young men at one and the same time, as the said Trustees and Managers for the time being, or any four or more of them, should approve and think fit; and she also gave all the surplus and remainder of the aforesaid clear and residuary rents, issues and profits of the premises after the death of the said Dame Sarah Hewley during all the continuance of the said Trust Estates, upon trust that the said Trustees and the survivors or survivor of them, his and their assigns, and the heirs, executors and administrators of such survivor should from time to time employ and dispose of the same in and for the relieving such godly persons in distress, being fit objects of the said Lady Hewley's and the Trustees' and Managers' Charity, as the said Trustees and Managers for the time being, or any four of them, should think fit.

By a second deed, dated in 1707, Lady Hewley, after conveying to the same Trustees certain other Estates, partly for the support of an Almshouse built by her for poor pious Widows, and for which she appointed different Trustees, and after giving the residue to the same uses as in the deed of 1704, ordered that the Trustees should follow the rules and directions contained in a Book of Rules signed by herself, and should appoint such persons to the benefit of the Almshouse as were qualified according to such rules, nine of whom were to be poor Widows or unmarried Women upwards of fifty years of age, and one a sober,

discreet and pious poor Man, who should be qualified to pray daily with them twice a day, if such a person could be found.

The rules referred to by this second Indenture seem to have been carefully drawn up, and are styled by her "Rules for the due qualification of such poor persons," and are expressly required to be read over by the Trustees to each person when appointed. They are as follows:—

"Rules and Orders to be observed about the qualities or qualifications of the poor people to be elected into the said Almshouse from time to time."

"Let none be elected into the Almshouse who have a clear personal Estate of above £60, or a real Estate above the Annual value of £3, above all reprizes and near relations that are able in Estate and bound by the Laws of God and nature to relieve them at home. Let all persons to be elected prove their age to be above fifty-five years by good testimonials if required. Let none be admitted into the Hospital that cannot be conveniently separated, for their Children must not be permitted to live with their Parents in the Hospital but in cases of infirmity and sickness, when they are bound in duty and charity to minister to their Parents' necessities. Let none of evil fame or report be admitted into the Hospital, but such as are poor and piously disposed, and of the Protestant religion, not given to strong drink nor to gossipings, and such as have lived infamously in their youth or have been justly blemished with any gross immorality, let them not so much as in old age be elected without good evidence of their repentance and amendment. Let all persons to be chosen bring Certificates according to Law from the Parishes or Constabularies wherein they lived, that they were legally settled therein; that if they should forfeit their right to the Hospital, they shall be received into the Parish whence they came. Let every Almsbody be one that can repeat by heart the Lord's Prayer, the Creed and Ten Commandments, and Mr. Edward Bowles's Catechism. Let all the Almspeople, when not disabled by weakness, duly repair to some religious Assembly of the Protestant Religion every Lord's-day forenoon and afternoon and at other opportunities to attend the ordinances of God. Let them be ready to attend their Alms Sisters in their sickness and to assist them by turns. Let no Almsbody receive any visits on the Lord's-day, except in case of sickness, nor shall they show their rooms to any on that holy day. Let no Almsbody receive any Servants into their House to bear ill reports out of the families where they are or have been Servants. Let none of them be ever abused with strong drink, nor let any behave themselves uncharitably and unquietly with one another by scolding or evil language; neither let them be busy-bodies nor tatlers, nor tale-bearers nor wanderers about from house to house, but keepers at home; nor common swearers, cursers nor liars. Let each keep their own rooms clean, and all bear an equal share in the charge of cleaning all the places of common usage. Let no Almsbody be found begging from door to door at home or abroad, or asking alms; yet may they gratefully accept anything that shall be freely given them by any; and if they shall be found begging, let them be expelled the Hospital: none chosen and admitted to be Almspeople shall after their admission go abroad selling bread, eggs, cakes or such like things, except of their own manufacture; and what by their hand labour they can honestly acquire at home they may enjoy. Let every Almsbody morning and evening in private devotion commend themselves to God in prayer, and in their

prayer remember their foundress Sarah Lady Hewley while she lives, and after her death pray for her Trustees."

Now it is contended on behalf of the Relators to the present Suit, that this Charity is to be confined to Protestant Dissenters entertaining a belief in the Divinity of our Lord Jesus Christ, in the Atonement, and in the Doctrine of Original Sin—in fact, those who are commonly called Orthodox Dissenters, in order to distinguish them from others who entertain different opinions as to these important matters, and who are called in common parlance (though undoubtedly by no very accurate description in that respect) Unitarian Dissenters. In more correct language, perhaps, they should be called Believers in the Unity of the Godhead without any distinction of persons therein. For we presume that those who differ with them in this respect equally believe in the unity of the Godhead, although they think (and that from what they consider plain texts of Scripture) that such mysterious unity is not inconsistent with the equally mysterious distinction of persons therein.

If this question at all depended on any investigation of the comparative truth and excellence of these doctrines, or upon a critical examination of texts of Scripture, (the only test to be applied by Protestants in such inquiries,) we should feel that this was not a proper Tribunal, and that we were not sufficient for these things. But this case really turns upon a question of fact. If the Unitarian doctrines are consistent with the intention of Lady Hewley, the decision of the Vice-Chancellor is erroneous. If they are inconsistent with it, the declaration he has made seems to us correct.

The Vice-Chancellor's declaration in substance is, that no persons who deny the divinity of our Saviour's person, and who deny the doctrine of Original Sin as it is generally understood, are entitled to participate in Lady Hewley's Charity.

There is no doubt as to the principles which are to govern our opinion; they are fully laid down and explained in The Attorney-General *v.* Pearson and others, 3 Merivale, 400, and may be thus shortly expressed:—The Will of the Founder is to be observed.

Then how is the Will of the Founder to be ascertained? If it be expressed clearly in the Deed or Instrument of foundation, there can be no difficulty.

If expressed in doubtful or general words, recourse must be had to extrinsic circumstances, such as the known opinions of the Founder, the existing state of the law, the contemporaneous usage, or the like.

Upon these principles, then, we proceed to consider the case. We may begin by laying the Church of England out of the question; for, although Lord Eldon says that a bequest for the worship of God would, *primâ facie*, be one to the Established Church, yet it is quite clear from all the documents in this case, that this foundation was in favour of some class or classes of persons dissenting from the Church.

This point has not been disputed. But then this question arises, Who are the Dissenters whom Lady Hewley intended to benefit?

The provision is fourfold. First, in favour of poor and Godly Preachers for the time being of Christ's Holy Gospel. Secondly, of poor and Godly Widows for the time being of poor and Godly Preachers for the time being of Christ's Holy Gospel. Thirdly, for the distribution of sums of money to encourage and promote the preaching in poor places of Christ's

Holy Gospel, and for the education of young men designed for the Ministry of Christ's Holy Gospel; and, lastly, for the relief of such Godly persons in distress as were fit objects of her Charity.

It is clear from this, that this pious Lady had directly in view the encouragement of the preaching of the Gospel by Protestant Dissenters, and that in three ways.

First, by provision to Preachers and to their Widows. Secondly, by direct gifts of money for building places of worship or endowing them where built in places not otherwise able to support a minister. Thirdly, for the education of youth for the same Godly purpose.

These three objects have plainly in view the propagation of some doctrines which she deemed to be of importance to the souls of men, and her fourth object was in complete accordance with the three others, being in truth the relief of the professors of the same doctrines, in case, from their narrow circumstances or unforeseen calamities, they should be reduced to pecuniary distress. What, then, were the doctrines in question? *Primâ facie*, these would surely be the doctrines which she herself conscientiously entertained, and there is no reasonable doubt what those doctrines must have been. But she has more particularly described in her second Deed, and in the rules she herself formed, one class, viz. the poor pious widows whom she deemed to be fit objects of the bounty in the Almshouse which she had built.

They must be persons piously disposed and of the Protestant religion; they must be able to repeat by heart the Lord's Prayer, the Creed and Ten Commandments, and Mr. Edward Bowles's Catechism; and they must weekly attend (unless sick) some place of Protestant worship.

To what class or classes of persons does this description extend?

In the first place, it is expressly confined to Protestant Dissenters. In the second place, it seems clearly not confined to one class of Protestant Dissenters alone, because the Widows are only required to attend some place of such Protestant worship. But, in the third place, it seems also as clearly intended to include those persons alone, who, though in many respects differing in opinion, yet agreed in some points which, probably, Lady Hewley thought fundamental; and we know from history that if it was her opinion, she was by no means singular in it. What, then, were the fundamental points? We think they must be taken to be those doctrines which are to be found in the Lord's Prayer, the Creed, the Ten Commandments, and Bowles's Catechism.

It has been argued that the only qualification required is, the being able to repeat those by heart; but we cannot think so meanly of Lady Hewley's understanding as to adopt that argument: we think she meant that they should accept these, and the doctrines therein contained, as a rule of faith, and that they should have them by heart, in order that they might be more deeply impressed with them,—precisely in the same way and for the same purpose as the Godfathers in the Baptismal service of the Church of England, are required to cause the child to learn to say (which means to say by heart) the Creed, the Lord's Prayer and the Ten Commandments, and to be further instructed in the Church Catechism; and as, in the Rubric, the children are required to be brought for Confirmation to the Bishop, as soon as they can do this and have attained a fit age, no one can believe that these provisions were intended to try their memory and not to prove their faith.

Then what are the doctrines to be found in these documents?

We may lay aside the Lord's Prayer and the Ten Commandments, being measures about which all Protestants are we believe agreed,—at any rate, all the parties to this suit understand and assent to them in the same sense. Perhaps this may not be the case as to the Apostles' Creed, which, though certainly general in its language, has been usually confined as a creed to churches which did not doubt the divinity of our Saviour Jesus Christ. It is, as we have seen, one of the tests necessary for Baptism and Confirmation in the Church of England, and certainly is in that church by its Catechism explained in a Trinitarian sense, as plainly appears if we consult the Prayer Book; for the child there answers that he understands by it, first, a belief in God the Father, the Creator of all things; secondly, in God the Son, the Redeemer of all mankind; and thirdly, in God the Holy Ghost, the sanctifier of all the elect people of God.

Indeed, it is not improbable that Mr. Baxter took the same view of the doctrines contained in the Apostles' Creed; for when, on one remarkable occasion, he proposed that subscription to the Creed, the Lord's Prayer and the Ten Commandments should be alone sufficient as a test for church communion, it was objected that these might be subscribed by a Papist or a Socinian, he says, so much the better; but adds, "But if they were afraid of communion with Papists and Socinians, it should not be by making a new test or rule of faith which they will not subscribe to, but by calling them to account whenever in preaching or writing they contradict or abuse the truth to which they have subscribed."

It would seem, therefore, that he thought that the preaching or writing some of the Papist or Socinian doctrines would be contrary to the truth of these articles if they subscribed them: he must, we think, have referred to the Second Commandment as to the Papists, and to this Creed as to the Socinians; for there does not appear to be anything else in his proposed test to which this observation could at all even plausibly apply.

And this view of the Apostles' Creed confirms and is confirmed by the last document, Mr. E. Bowles's Catechism. Now, in the first place, it is stated by all the witnesses, amongst whom are to be found some very distinguished divines of various persuasions, and who all agree in this, that this catechism is essentially Trinitarian, and that it can be assented to properly by those alone who admit Original Sin and the Atonement made for it, and acknowledge the proper divinity of our Lord and Saviour Jesus Christ. This would be quite sufficient, for there is no evidence on the other side, and we are to decide on the evidence.

But on reading this catechism ourselves, with that attention it requires, and considering it, we cannot doubt that if we were required to form an opinion on it, we should decide that the witnesses have taken a correct view of Mr. Bowles's book. It does appear to us clear that these are the doctrines fairly to be deduced from it, particularly by comparing it with the passages of Scripture quoted in its margin.

We would rather, however, put this point of the case on the general tenor of the whole catechism and the uncontradicted evidence, than on our own view as to particular passages in it, lest we should fall into an error on some controverted question of criticism or theology, which are always delicate and dangerous subjects for unprofessional divines to handle.

Upon the whole, then, we think that in the description which, by her

own rules, Lady Hewley has given of the widows who were to be inmates of her almshouses, those only were meant to be included by whom the doctrines enumerated in the Vice-Chancellor's declaration were accepted as a rule of faith. Now we think it reasonable to conclude that these widows who were to be the inmates of the almshouse are part of the fourth class, described in the deed of 1704 as "Godly persons in distress." They are not only subjected in the deed of 1707 to the discretion of the Trustees, being objects out of that class selected by Lady Hewley herself, but their description affords us the means of ascertaining, upon Lady Hewley's own authority, what she meant by the word "Godly" in both the deeds. If this be so, then the same expression which is applied to the preachers and their widows ought to receive the same construction, it being plainly incongruous to give in one deed two meanings to the same expression. But independently of this, at all events, the qualification attached by Lady Hewley to the admission of the inmates of her almshouse distinctly shows what her own opinions were, and how anxious she was for their adoption by others: and then that anxiety would apply with far greater force to the adoption of those opinions by preachers whose duty it was to take active steps for the propagation of the doctrines they professed. For an error there would probably lead to evils of a much more extensive nature. It is not likely that a lady who wished to regulate the opinions even of the poor widows, the objects of her pecuniary bounty, could intend to permit her funds to be devoted to the active propagation of any other than the same fundamental doctrines. It is quite inconceivable that she could thus (if with reverence we may use the emphatic language of Holy Writ on this subject) have strained at a gnat and swallowed a camel.

We think, therefore, that Lady Hewley, by poor and godly preachers, meant preachers professing the doctrines contained in the Vice-Chancellor's declaration. Again, if this be so, and if this be the class of persons whom she designates as poor and godly preachers of Christ's Holy Gospel, it is most rational then to consider the other bequests for the encouragement and preaching of Christ's Holy Gospel, and for the educating of young ministers of that Gospel, as confined to the preaching of persons professing these same doctrines, and the education of youths for the ministry in places where those doctrines are professed.

This view of the case appears to us to be much confirmed by the peculiar language of Lady Hewley's Will, by that of her pastor, Dr. Colton, by the state of the law at that period, and by the general tenor of history, both as to the doctrines then usually professed by the great body of Dissenters at that time, and their non-interference with that particular provision in the Toleration Act applicable to Unitarian preaching.

We were much pressed with quotations from various authors on this point by the learned and ingenious gentlemen who argued for the Defendants; but they have failed to satisfy us even as to the probability of any such catholic intention as that for which they contend having been entertained by Lady Hewley. Such a view may perhaps have been taken by a few speculative divines of great benevolence of feeling, but was never very generally received. It is indeed observable, that almost all the very men who held such opinions constantly asserted their own orthodoxy of belief on the points now in question, and that in no instance whatever that we remember, are they found to approve of the preaching

or inculcating, by the teaching of youth, those doctrines now contended for and openly avowed by the Unitarian Dissenters in their discourses from the pulpit.

The greater part, if not the whole, of those quotations seem to us applicable rather to the terms of church communion than to the present subject. For the question now is upon a charity to be devoted to the active propagation of doctrines by pecuniary encouragement given to their professors, and is not whether, without any particular test, it may be allowed to persons differing on material points to wave them and, notwithstanding, to associate in one religious community together. We do not, indeed, think such a plan wise or likely to succeed in producing peace in the churches; but we do not doubt that it has often been entertained by speculative men, who have not, perhaps, attended sufficiently to the results of practical experience in human life.

But this argument as to a supposed Catholic intention, seems inconsistent, also, with the probabilities of this case. Lady Hewley must have had fixed religious opinions, conscientiously and strongly felt by her, or else it is not likely that she would have made this foundation. It is very unusual for religious foundations to be made by any other than persons having strong and fixed religious opinions themselves. Those who entertain what are called latitudinarian notions on such subjects, are not commonly those who leave their property in this way.

But waving this, it seems to us clear that Lady Hewley, by requiring the Apostles' Creed, or indeed any definite creed at all, as a necessary qualification in the case, has given herself a decisive answer to this argument, and has negatived the probability of her at least having ever entertained this supposed catholic intention, by which, looking forward into futurity, she is imagined to have contemplated a continual movement in advance of religion, in the course of which all her own peculiar doctrines should, with others, gradually be absorbed and lost in the light and splendour of what is called increasing knowledge and reason; for the very object and peculiar advantage of a creed is, to prevent this perpetual fluctuation, and to fix religious opinions by bringing them continually to a definite test.

We have adverted to this part of the case, not as considering it a very important topic, but as it formed the principal ground of the argument before us, we thought it not right altogether to pass it over.

Upon the whole, our opinion is, that the declaration of the Vice-Chancellor is right.

There is another part of the case, which relates to the course your Lordship as a Judge in Equity ought to pursue, as to retaining or removing the Trustees, in case your Lordship's opinion should agree with and confirm that which we have now delivered.

That will depend of course on the point whether your Lordship is satisfied that these Trustees do in fact profess opinions differing from those to the promotion of which Lady Hewley devoted her foundation, and whether in that case it is the duty of a court of equity to remove them from a Trust which they cannot so properly discharge as persons whose opinions concur with those of the Foundress.

But these are points on which it does not become us to offer any opinion to your Lordship.

Lord LYNDHURST.—This case was originally argued before my late

predecessor in the office of Chancellor, in the presence of two of he learned Judges. Circumstances to which it is not necessary that I should particularly advert, prevented that noble and learned Judge from pronouncing any decision upon it. I regret that the parties were deprived of the benefit of his judgment. The case was afterwards argued before me with the assistance of the learned Judges who are now present. It was argued with great ability and learning, and everything was brought to bear upon the subject that could properly be urged for the purpose of leading the Court to a correct conclusion upon it. I certainly could have wished that I had not been called upon to pronounce Judgment upon such a subject. But the parties on both sides have expressed their wish that we should decide it, and I have felt it my duty to comply with that request.

It must be satisfactory to those who are interested in the case, that, upon this occasion, I have had the assistance and advice of the learned Judges now present, so much distinguished for their intelligence, ability and learning. It is highly satisfactory to me, not so much because I consider that there is any great difficulty in the case, as on account of its importance to the parties who are interested in it, and, I may add also, on account of its importance to the public.

I agree entirely in the principle, stated by the learned Judges, upon which this case must be decided. In every case of Charity, whether the object of the Charity be directed to religious purposes or to purposes purely civil, it is the duty of the Court to give effect to the intent of the founder, provided this can be done without infringing any known rule of Law. It is a principle that is uniformly acted upon in courts of equity. If, as they have stated, the terms of the Deed of Foundation be clear and precise in the language, and clear and precise in the application, the course of the Court is free from difficulty. If, on the other hand, the terms which are made use of are obscure, doubtful or equivocal, either in themselves or in the application of them, it then becomes the duty of the Court to ascertain by evidence as well as it is able what was the intent of the Founder of the Charity, in what sense the particular expressions were used. It is a question of evidence, and that evidence will vary with the circumstances of each particular case; it is a question of fact to be determined, and the moment the fact is known and ascertained, then the application of the principle is clear and easy.

It can scarcely be necessary to cite authorities in support of these principles; they are founded in common sense and common justice; but if it were necessary to refer to any authority, I might refer to the case which has been already mentioned, the case of the Attorney-General v. Pearson, and to another case which was cited at the Bar, the case in the House of Lords. Throughout those Judgments, the principles which have been stated were acknowledged and acted upon by a noble and learned Judge, of more experience in courts of equity, and more experience in questions of this nature than any other living person. I look upon it, then, that these principles are clear and established—that they admit of no doubt whatever.

What, then, were the objects and the purposes of this Charity? We look at the deed of foundation, and we find from it (the deed of 1704) that the object was to assist poor and godly preachers of Christ's Holy Gospel; to assist poor and godly widows of the same description of per-

sons; to promote and encourage the preaching of Christ's Holy Gospel in poor districts and places; to assist in the education of young persons intended for the ministry of Christ's Holy Gospel; to assist poor and godly persons in distress. These are the objects of the deed of 1704. The deed of 1707 provides for the maintenance of ten poor persons in certain almshouses that were founded by Lady Hewley. The rest of the property is directed to be applied to the same objects as are mentioned in the original deed of 1704.

This is the substance of the provisions of the two deeds; and the first question that arises, and essentially almost the only question, is this, Whom did the Foundress of this Charity mean to designate by poor and godly preachers of Christ's Holy Gospel? And what were the principles and doctrines of which she intended to encourage and promote the preaching?

It may be said, that the expression "poor and godly preachers" is clear and precise; but it is admitted on both sides, as well on the part of the Relators as on the part of the Defendants, that it does not include ministers of the Established Church. However poor, however godly, however pious, by the admission of the parties, they are excluded, and rightly. It appears, therefore, that the terms poor and godly preachers are to be taken with some limitations and restrictions; and the question, therefore, is, what are the proper limitations and restrictions in this instance?

The first question then for consideration, in order to lead us to a correct conclusion upon this point, is, as to the particular religious opinions of Lady Hewley, the Foundress of this Charity. There can be no doubt that she was in her religious faith and opinions a Presbyterian. It is a matter of history that she was so. It is admitted by the answer of Mr. Wellbeloved and others of the Defendants. It is proved by the evidence in the cause, by the evidence of those learned and respectable witnesses to whom the learned Judge has referred. It is not contested by any contradictory evidence. It is proved that she attended the chapel which she herself, I believe, built and in part endowed—St. Saviour's Gate Chapel—and which is admitted to have been a Presbyterian chapel; Dr. Colton, the preacher at that chapel, was an acknowledged Presbyterian; he was her religious adviser; he was the executor to her Will; he preached her funeral sermon;—all these circumstances lead to the conclusion that she was in her opinions a Presbyterian.

This being so, then, the next question in order is, what were the doctrines and opinions of the Presbyterians at that time? Upon this also I think no reasonable doubt can be entertained. The Presbyterians objected only to those Articles of the Established Church that related to matters of discipline and church government. They did not object to any of the doctrinal Articles of the Church of England. It is stated by the witnesses, and there is no contradictory evidence, that the Presbyterians of that day were believers in the Trinity and in the doctrine of Original Sin, as contained in the Articles of the Church of England. If we go further we find the same points, to a degree at least, admitted in the answers of Mr. Wellbeloved and others of the Defendants. Very many, they say, of the Presbyterians of that day believed in the doctrine of the Trinity. The admission is qualified by the term "very many," which admits of an extensive latitude of construction; but coupling this

with the evidence, I am justified, I think, in coming to the conclusion, that the great body of the Presbyterians were in their opinions Trinitarians.

But that which appears to me to be decisive upon the subject is a document which was referred to in the course of the argument, namely, the Heads of Agreement that were entered into between the Presbyterians and the Independents, in the year 1691. In the eighth section of those Heads of Agreement, intituled "Of a Confession of Faith," they say that they hold either the doctrinal part of those commonly called the Articles of the Church of England, or the Confession or Catechism, shorter or larger, compiled by the Assembly at Westminster, or the Confession agreed on at the Savoy, to be agreeable to their rule of faith and practice. That document, therefore, appears to me to be decisive upon the question, because the particular articles to which they refer, namely, the Articles of the Church of England, the Confession, the Shorter and Larger Catechism, and the Confession agreed on at the Savoy, all contain, expressly and distinctly, Trinitarian doctrines.

If it were necessary to go further into this case for the purpose of showing what were the opinions of the Presbyterians at that time, I might refer to the Act of Toleration. It is well known that the Dissenters were consulted in framing that Act, and that they were satisfied generally with its provisions. But we find in the seventeenth section that no person is allowed to preach, or is relieved from the penalties of former Acts of Parliament in preaching, unless he subscribes the Articles of the Church of England, with the exception of the 34th, 35th, 36th, and part of the 20th, which do not relate to doctrinal matters, but relate merely to church government and matters of that description. The whole of this evidence, therefore, leads me to the conclusion, about which I think no reasonable doubt can be entertained, that the great body of the Presbyterians, as well as the Independents of that day, namely, at the commencement of the eighteenth century, believed in the doctrine of the Trinity and in the doctrine of Original Sin, which is contained in the Articles of the Church of England, and other documents to which I have referred. Was Lady Hewley, then, an exception to this general rule, as to belief with reference to the doctrine of the Trinity and with respect to the doctrine of Original Sin? It appears to me, when we have established that she herself was a Presbyterian, and that the general doctrines of Presbyterianism were such as I have stated, that it is incumbent upon those who contend that she was an exception to the general belief, to give evidence for the purpose of establishing that part; that the burden of proof is upon those who make that assertion or that suggestion. But, waving this, what are the probabilities of the case? It is well known that the principles of Unitarianism were at first very coldly received, and were listened to with aversion, and even with disgust, more particularly among the laity. Lady Hewley, at the time to which I am referring, was a person advanced in life. Is it probable, then, that she should have adopted these opinions, and upon points which, in one of the documents before me, are stated, I think by Dr. (*Mr.*) Kenrick, to have been considered by all churches essential?

There is another consideration that presents itself, arising out of the situation and character of Lady Hewley. She had attracted much at-

tention. She was a person of great piety, of a certain rank, of great and unbounded charity. It must have been known, it would indeed have become a matter of notoriety, if she had entertained these opinions. It must have come down to us as a matter of history, had she entertained Unitarian opinions, in the same manner as in the case of Firmin—a person who resembled her in the charitableness of his disposition and character. But it is not necessary to rely upon probabilities in this case. We have direct evidence of the fact. The witnesses who have been so often referred to, declare that she was a believer in the Trinitarian doctrines, and upon this point also there has been no contradictory evidence whatever.

If we advert to the evidence of Mr. Wellbeloved and others of the Defendants,—what is it that they say to this point? They do not deny that she entertained Trinitarian opinions, that she was a Trinitarian in her belief. On the contrary, they say that they have heard and believe that very many of the Presbyterians at that period were Trinitarians, but, save from the probability arising from such circumstances, they cannot say whether she in her religious belief was a Trinitarian. They admit, therefore, the probability of her having been a Trinitarian,—which is substantially to the same effect, though not so strong in the expression as what Mr. Wellbeloved is reported to have stated upon this subject to the Commissioners. For in their report they say, that Mr. Wellbeloved concludes from Lady Hewley's attendance at the chapel during Dr. Colton's time, and from the general state of religious opinions at that period, that she did not entertain what are commonly called Unitarian sentiments.

But the evidence as to this important part of the case does not rest here. Dr. Colton is admitted to have been a Trinitarian: no doubt is entertained upon that point. Dr. Colton must have been a Trinitarian, because, as he was the preacher at St. Saviour's Gate Chapel, he must have subscribed the Articles, agreeably to the seventeenth section of the Toleration Act; and we are not to presume that he would have subscribed those Articles fraudulently, particularly a man of his character, his learning and his piety. Dr. Colton, therefore, was a Trinitarian, and, as I have before stated, he was the preacher at Lady Hewley's chapel. He was her adviser in religious matters; he was the executor to her will; he preached her funeral sermon; and in that sermon there is the strongest evidence of the double fact of Dr. Colton himself being a Trinitarian, and of Lady Hewley, with whose sentiments he was intimate, entertaining also the same opinions. Never, therefore, was there a stronger body of evidence leading to any conclusion than this, to show that Lady Hewley did not entertain Unitarian opinions.

But I do not stop here. There is that document which has been adverted to by the learned Judge, namely, Bowles's Catechism. Passing over the question relating to the Trinity, although the witnesses who are conversant with the subject state that Bowles's Catechism is to be taken as a Trinitarian catechism,—yet this at least is clear, that the doctrine of Original Sin is expressed in that Catechism in the most clear and distinct terms. I agree entirely with what the learned Judge has stated, that when Lady Hewley requires as a qualification for those persons who are to be admitted into the Almshouse, that they should be able to repeat by heart Bowles's Catechism, that she must be taken to have as-

sented to the doctrines contained in it. If so, the evidence is clear that as to one material point she was a believer, viz. in the doctrine of Original Sin. And if we may rely on the testimony of those witnesses who have been examined, that this is a Trinitarian Catechism, then that also establishes the fact of her being a believer in the doctrine of the Trinity.

I have thus endeavoured to show that Lady Hewley was a Presbyterian, and also to show what were the general doctrines of the Presbyterians at that time. And the result of the further inquiry has been to satisfy my own mind that Lady Hewley was not an exception to the general rule of belief of that class of Dissenters to which she belonged, but that she herself also was a Trinitarian, and a believer in the doctrine of Original Sin.

That being the case, then, we are prepared for the more satisfactory consideration of the next point, What did she mean by "Godly preachers of Christ's Holy Gospel?" What were the doctrines the preaching of which she meant to promote and encourage? Is it possible to come to the conclusion, according to any ordinary rules of reasoning, that she intended to found a Charity and bestow her property for the purpose of preaching doctrines directly at variance with her own? And this not as to subordinate and trifling and formal matters, but with respect to points that have always been considered by every church as essential—which she herself must have considered as essential.

When I say points which have been always considered as essential, I am not using my own expressions, my own language; it is the language, and these are the expressions, of a very learned person, Dr. (*Mr.*) Kenrick, one of the Defendants. In the sermon lying before me he says, "If others have established a distinction between those essential articles of faith which cannot be rejected without perdition, and the non-essentials on which men may safely differ, we at least gain little by the relaxation; for I know of no church which does not regard as essential those very articles which our name implies that we reject."

Can we believe, then, I repeat it, that this pious Lady would have given her funds for the purpose of promoting and encouraging the preaching of doctrines directly at variance with those opinions which she entertained upon points which have been universally considered as essential in matters of religious belief? At least it would require some fact or some argument to justify us in coming to such a conclusion. All the presumptions and probabilities are the other way; and as a question of fact, I feel myself obliged to come to this conclusion, that it is almost impossible to suppose that such could have been her view and intention.

But another argument arises out of the Act of Parliament to which the learned Judge has referred, or rather out of the Acts of Parliament of that period. Those preachers who denied the Deity of Christ were exempted, if they preached, from the benefit of the Act of Toleration. That Act was passed in the year 1688. In 1698, ten years afterwards, and six years before the date of the first of these deeds, the act against blasphemy was passed, in which those persons who denied that any one of the three persons in the Trinity was God, were subject to the severest penalties. Those were called impious and blasphemous doctrines; to teach them was called a detestable crime. I am not justifying the law—I am making no comment upon it—I am stating only what the law at that time was. Those persons who by preaching denied the doctrine of the

Trinity—I think the word is "teach"—who either in writing, in teaching, or advised speaking, shall maintain those doctrines, are subject to the penalties of the act to which I have referred. It was contrary to law, therefore, at that time, to preach those doctrines. To give money for the purpose of encouraging and promoting the preaching of them would also in itself be illegal.

What are the rules by which the conduct and the language of persons are to be interpreted? The rule is this—and it is a fair and proper rule—that where a construction consistent with lawful conduct and lawful intention can be placed upon the words and acts of parties, you are to do so, and not unnecessarily to put upon these words and acts a construction directly at variance with what the law prohibits or enjoins. I cannot therefore bring myself to the conclusion, that Lady Hewley intended to promote and encourage the preaching of doctrines contrary to law—that she intended herself to violate the law. It would be contrary to every rule of fair construction and legal presumption so to decide.

It was argued, however, at the Bar, that this law was now repealed; and it was supposed that the repeal of the law would make an alteration in the consideration of the case. It does not appear to me, in the slightest degree, to affect the question. The question is, what was her intention at the time? What, at the time when she executed this Deed, she intended? Who were the persons whom she meant to include in it? What were the doctrines of which she intended to encourage and promote the preaching? It makes no alteration in this respect—it makes no change as to her intention at the time that a century after the law has been changed, and that is considered as innocent which at that period was considered as illegal. On these two grounds then, each of which appear to me conclusive, first of all, that I cannot presume that this pious Lady intended that her estates should be employed to encourage and promote the preaching of doctrines directly at variance with what she must have considered as essential to Christianity, and that she could not intend to violate the law; on those two grounds I feel myself, as a conclusion of fact, compelled to come to this determination—that she did not intend, under the description of Godly Preachers, to include those persons who impugned the doctrine of the Trinity, that she did not intend to promote and encourage the preaching of those doctrines. With respect to the law, and her respect for its authority, we find some evidence of it in the second deed—the deed of 1707, for she says, that if by any lawful authority the objects of her bounty, in that deed, cannot be carried into effect, then she directs her Trustees to make a different application of the funds.

It has been said, and the learned Judge has adverted to it—it has been said, in general terms, that the religious opinions of that day were liberal and comprehensive, and that in particular, Lady Hewley entertained large and liberal views upon subjects of religion. This, however, rests on general statement, of which there is no sufficient or satisfactory evidence, and from which I can come to no precise or satisfactory conclusion. I am bound, therefore, for these reasons, having first established to my satisfaction that she was, in her religious opinions and belief, a Trinitarian,—I feel myself compelled to come to the conclusion, that she never intended that her bounty should be applied for the purpose of promoting or encouraging the preaching of Unitarian doctrines. This is the

ion of fact to which I have come, and I have the more satisfaction
esult, because I came to it without at all knowing what were the
s of my two learned friends, without having had any communi-
with them upon the subject. I formed my opinion upon a careful
ration of the case, thus agreeing, not only in the conclusions,
the grounds and principles upon which the learned Judges
me to them, who have favoured me with their assistance on this
n.

question, then, for consideration that remains is this,—By whom
ese funds been administered, and in what way have they been ad-
red? The Trustees are, with one or two exceptions, both the
s and the sub-Trustees, proved to be Unitarians; Mr. Palmes is
er of the Church of England; Mr. Heywood was not proved to
arian; with respect to the rest, as I understand and read the
e, they entertain Unitarian opinions. What are these doctrines?
n their answer, do Mr. Wellbeloved and others of the Defendants
be Unitarian opinions? They state, that they believe it to be
at the class of Christians styled Unitarians do reject, as unscrip-
he doctrine that Jesus Christ is really and truly God, and as such
r object of divine worship. They believe it to be true that the
f Christians styled Unitarians do, many of them, reject, as un-
al, the doctrine of original sin, or that a man is born in such a
at if he were to die in the condition in which he was born and
e would perish everlastingly. These are the doctrines stated in
wers of Mr. Wellbeloved and several of the other Defendants as
he peculiar doctrines of the Unitarians.

bservation was made, I think, by a learned gentleman whom I
e in Court, on the conduct of Mr. Wellbeloved with respect to
wers, stating that they were reluctantly extorted, obtained with
y. I think I owe it to Mr. Wellbeloved and to the other Defend-
observe, that from the nature and the delicacy of the subject,
re justified in using much caution, and if we can fairly refer the
t of men to proper motives, we are not justified in ascribing it
as are improper. Mr. Wellbeloved may have considered that the
ns were not, in the first instance, put in such a way as to lead
y to these answers; and he may have thought it his duty to ex-
great caution on such a subject. But leaving this, besides the
s, we have, from the mouth of Mr. Wellbeloved, and we also have
Ir. Kenrick, clear and distinct statements of what the opinions of
itarians are upon the points in question.

er to a document which is in evidence, a sermon preached by Mr.
loved, at Hull, in which he states his opinions in these terms:—
the doctrines concerning the deity of Christ, we also reject, as
unscriptural, those which other Christian sects hold to be of such
portance, relating to his office and the design and consequences
death. We see nothing in the pages either of the Old or New
ent to justify the doctrines which are generally deemed ortho-
lating to original sin;" so that he also there states that they re-
doctrine concerning the deity of Christ, and this also, relating
inal sin. In another part of the same sermon he says, "but it
said that we deny his deity," that is the deity of Christ; "We
to acknowledge him as the second person of the Godhead; we

do not allow him to be one God with the Father, co-eternal and co-equal, or even God of God." "We confess," he says, "the Man Christ Jesus, but deny him as that incarnate, suffering and dying God, which he is believed to have been by all others who bear his name. True, we do deny the Jesus of the Athanasian and the Nicene Creeds, of the Liturgy and the Articles of the Established Church, of the confessions of faith adopted by almost all the churches of Christendom." Nothing can be more clear and distinct than these statements, not only as to his own opinions, but as to the opinions of those who think with him, and who come under the class and denomination of Unitarians.

Now as to Dr. (*Mr.*) Kenrick, another of the Defendants upon this record, a gentleman of talent and learning; he says, "We are convinced that no doctrines can ultimately prevail among a people allowed to think and examine for themselves which, like transubstantiation, involve a sensible absurdity, or, like the Trinity, a metaphysical contradiction." "The surrender of their understandings," he says, "is a price which men will not long consent to pay for the belief of any system of Theology."—Such are the doctrines stated by two of the Defendants as the doctrines of the Unitarians. I consider, then, the great body of Trustees and sub-Trustees are disbelievers in the Divinity, or to use the term of the Unitarians, the "Deity of Christ," and disbelievers in the doctrine of Original Sin.

Having stated this, then, the next question is, how and for what purposes have these funds been applied by these Trustees? In what manner have they discharged the important duty that was entrusted to them? If we are correct in the conclusion we have come to, as to the intention of Lady Hewley, the funds have been misapplied, and misapplied for a long series of years, and to a very great extent. This alone might be a sufficient ground for removing the Trustees. But it has been said, that this was unintentional upon their part, that it was an error of judgment, that they put fairly and *bonâ fide* a construction upon the instruments that would have justified their acts. But looking at the evidence in this case, I am compelled to come to a different conclusion, and to say, though I do not wish to enter into detail upon the subject, because I am desirous, as far as possible, to abstain from everything that is personal on this occasion,—I am compelled to say, using the most gentle terms, that there has been in my judgment a strong and undue bearing in the administration of the funds towards the Unitarian doctrines and Unitarian purposes.

I shall not go through the evidence with respect to this part of the case, but shall content myself in referring only by way of example to two points. How has it happened that almost all the Trustees are Unitarians? That the vacancies have been so filled up as to make the whole body substantially Unitarian, as to place the entire control of these estates, and funds, and the management of the whole charity, in the hands of Unitarian Trustees, persons entertaining Unitarian opinions?

Another subject to which I shall also refer in illustration of what I have stated, relates to the exhibitions to Manchester College. Almost all the exhibitions, of late years, have been given to persons educated at that College. Upon a careful examination of the evidence, I must consider, that so far as relates to the education for the ministry, Man-

ter College is substantially an Unitarian Establishment. I refer to :vidence, among others, of Mr. Manning Walker, who was himself :ated as an Unitarian, and was a member of that College. It ap- s to me strong and decisive upon this point. If I required further irmation, I might refer to Mr. Wellbeloved's letter, in which he calls 1 the Unitarian Dissenters to subscribe to the support of that esta- ıment, for the purpose of maintaining a succession of well-educated isters in their class of Dissenters; obviously meaning—indeed the is proved by the evidence—meaning those of Unitarian opinions. 'hese circumstances with others lead me, therefore, to the conclusion merely that these parties have misapplied the funds, but, that in the cise of their trust, they have manifested a strong and undue leaning ıvour of persons of their own persuasion. I think, then, looking at e circumstances and considering the extensive and continued misap- ıtion of the funds which has taken place, and adverting also to the ıideration of the danger of future abuse, if persons maintaining particular class of opinions are to be entrusted with the manage- ıt and entire control of funds which are to be applied for the benefit of ıons maintaining other opinions, that I am bound to come to the clusion, that the Vice-Chancellor was correct in removing the Trus- . After what I have already stated, it follows, that I think he was ect in the declaration that he has made. And the result, therefore, ny Judgment is this,—Feeling myself confirmed in the principle of ıy the learned Judges near me, and coming to the further conclu- ıs which I have stated, founded upon these principles, I think that judgment of the Vice-Chancellor should be affirmed. It is not a : for costs, and I think it should be simply affirmed.

Ir. BOOTH.—Does your Lordship think under the circumstances the stees were not justified so far in appealing, considering the grounds : the Judgment went upon, as to entitle them to costs in a question mportant?

Ir. KNIGHT.—If your Lordship will hear me upon that.

ord LYNDHURST.—I say nothing about their own costs.

Ir. KNIGHT.—So I thought. Their costs are not to come out of the tes.

Ir. BOOTH.—Does not your Lordship think it right to give them r costs out of the estate?

ord LYNDHURST.—Certainly not; that is not the effect of what ated; it was after a Judgment.

Ir. BOOTH.—Will your Lordship allow me to mention an omission he Decree of the Vice-Chancellor, which, I believe, if it had been ad- ed to at the time, would have been supplied?

ord LYNDHURST.—My attention was never drawn to anything of sort in the argument.

Ir. BOOTH.—This has arisen since the Decree gives the costs to the endants in the fullest manner. Now upon the question of the ex- tions to the answer, costs were incurred by the Defendants. The stees were called upon to state as to their religious belief, and excep- ıs were taken to the Report of the Master, and it was carried, first, ıre the Vice-Chancellor, and then before the Lord Chancellor, my d Brougham, and, upon that occasion, his Lordship expressed a clear ıion that the Trustees ought to have their costs out of the estate. I

have got here the short-hand writer's notes of what passed, and I trust your Lordship will think that that ought to be comprised in the costs coming out of the estate.

Lord LYNDHURST.—Does it come within the terms of the Decree as to costs?

Mr. BOOTH.—Referring parties to tax "their costs of this suit up to this time, as between Solicitor and Client, and that the Master should inquire whether the Relators and Defendants had properly incurred any and what costs, charges, and expenses relating to this Cause, beyond their costs thereof, and if the Master should find that the Relators and Defendants have properly incurred." Now Lord Brougham expressly stated, that they ought to have their costs out of the fund, and if that had been called to the Vice-Chancellor's attention, I believe, beyond all question, he would have said the same.

Mr. KNIGHT.—These costs are either costs in the cause, in which case they will be taxed and paid to them, or they are charges properly incurred. They are one or other of those, unless they are charges improperly incurred. The point will be brought under the attention of the Court, if necessary, upon excepting to the Master's report upon that subject.

Lord LYNDHURST.—And the present Lord Chancellor will decide it. In the situation in which I stand, I wish to decide nothing which is not absolutely necessary; I have been called to the decision of this question much against my will.

Mr. KNIGHT.—As your Lordship has not given to the Relators the costs of the appeal, but has left each party to bear his own, your Lordship will think it right to add a declaration that the Relators will have their expenses out of the fund.

Lord LYNDHURST.—Of course.

Mr. BOOTH.—Upon the former occasion, when the hearing broke off before my Lord Brougham, the Trustees desired to have his Judgment without further expense, and the Relators refused; and upon this occasion the Relators desired to have Judgment without further expense, and we consented. Does not your Lordship think that a reason for giving us the costs?

Lord LYNDHURST.—I understood that when it was broken off before, the Case was imperfect, and that more argument remained to be addressed.

Mr. BOOTH.—It was in the same situation as before your Lordship.

Lord LYNDHURST.—It had been entirely argued before me when I went out of office.

Mr. BOOTH.—When my Lord Brougham was about to resign the Seals, he threw out an offer, I believe in terms the same as that thrown out by your Lordship, that if the parties would take his Judgment, he would give it.

Lord LYNDHURST.—It is a very different thing taking a Judgment out of office, upon a case argued while the Chancellor was in office, and having a case partly argued after leaving office. I never would have consented to have decided the Case upon an argument addressed to me after I went out of office.

Mr. BOOTH.—The Case was part heard at the time when it was understood that my Lord Brougham was about to leave the Seals, and

it was part heard at the time when it was understood that your Lordship was about to leave the Seals.

Lord LYNDHURST.—I understand from the learned Judges that the case was the reverse.

Mr. Baron ALDERSON.—It was fully argued while Lord Lyndhurst held the Seals, and the Judges could have given their opinion while Lord Lyndhurst held the Seals.

Mr. BOOTH.—It was taken to be fully argued only by consent.

Mr. KNIGHT.—I can explain how that is. Sir Edward Sugden led the Appeal before Lord Brougham; he had not replied when Lord Brougham gave up the Seals, and he never waved the reply. I led the Cause before your Lordship, and I did consent to wave my reply: I have never replied upon this Appeal. Sir E. Sugden had not replied, and did not wave his reply.

Mr. BOOTH.—Perhaps if your Lordship should find upon inquiry—

Lord LYNDHURST.—I have inquired of the Common Law Judges, and they tell me the Case was not completely concluded before Lord Brougham.

Mr. BOOTH.—Neither was it before your Lordship, except by consent.

Mr. KNIGHT.—Mr. Booth consented to wave my reply.

Mr. Baron ALDERSON.—I believe, Mr. Booth, you are disputing about that upon which you will not differ when you understand it. The argument was finished before Lord Lyndhurst left office, and if you had not consented, the Judgment would have been given also before Lord Lyndhurst left office.

Mr. BOOTH.—Nearly a week before Lord Brougham left office, a similar offer was made to them by us to conclude the argument.

Mr. KNIGHT.—Sir Edward Sugden declined it, and I should have declined it in his place.

[1]* In the House of Lords.

Between Samuel Shore the younger (since deceased), Of Shore, Peter Heywood, Thomas Walker, Daniel G kell, John Wood, the Rev. Charles Wellbeloved, Rev. John Kenrick, Thomas Bischoff, Varley Bea (since deceased), Joseph Henry Oates, and Geo Palmes, APPELLANTS.

AND

His Majesty's Attorney-General at the relation of Thor Wilson, Joseph Read, George Hadfield, John Claph and Joseph Hodgson, RESPONDENTS.

THE APPELLANTS' CASE.

THE Suit in which the present Appeal arises was instituted for purpose of regulating a Charity founded at the beginning of the century by DAME SARAH HEWLEY, a lady belonging to the c of English Dissenters called PRESBYTERIANS, and the question decision turns upon the construction of the Foundation Deeds.

The Charity has two branches, each under the direction of a dist set of Trustees; the deeds relating to the first branch being dated in year 1704, those relating to the latter branch being dated in 1707.

The Foundress died in 1710.

By the first set of Deeds (which bear date the 12th and 13th of J 1704) various estates in the county of York were conveyed by L Hewley to seven Trustees, and, by an Indenture of the same date as latter of those Deeds, the Trusts were declared to be as follows:

That the Trustees (after payment of certain charges and expen should, out of the residuary rents and profits, pay such sums money, yearly or otherwise, to such and so many *poor and g Preachers for the time being of Christ's Holy Gospel,* and to s *poor and godly Widows for the time being of poor and g Preachers of Christ's Holy Gospel,* at such time or times, and fo long time or times, and according to such distributions, as the Trustees and Managers for the time being, or any four or mor them, should [2] think fit: and employ and dispose of such s of money, and in such manner, for the *encouraging and promo the preaching of Christ's Holy Gospel* in such poor places as said Trustees and Managers for the time being, or any four more of them, should think fit; and also employ and dispos such sums of money, yearly or otherwise, as and for exhibiti for such or so long time or times, for or towards the educating such *young men designed for the Ministry of Christ's Holy Gos*

---

* The figures in brackets show the paging in the Case of the Trustees, *as origin printed*, and are inserted here on account of the references which were from tin time made by Counsel, to *the Appellants' Case* and *the Respondents' Case.*

never exceeding five such young men at one and the same time, as the Trustees and Managers for the time being, or any four or more of them, should approve and think fit. And as to all the remainder of the residuary rents and profits of the premises, that the said Trustees should employ and dispose of the same in and for relieving of such *godly persons in distress being fit objects of the said Dame Sarah Hewley's and the Trustees' and Managers' Charity*, as the said Trustees and Managers for the time being, or any four or more of them, should think fit.

The Deed contained a direction that the Trustees should, in their disposition and distribution of the Charities, have a primary and chief respect to such objects thereof as were or should be in York, Yorkshire, and other northern counties (not excluding those in other places and counties), as the said Trustees and Managers for the time being, or any four or more of them, should think fit. And also, that *whatsoever charitable dispositions or allowances by the said Dame Sarah Hewley should have been made to persons or places in York or Yorkshire immediately or shortly before her death, should be continued and paid out of the said residuary rents and profits by the said Trustees and Managers for the time being, until they, or four of them at the least, should see just reason to discontinue, alter, or determine the same or any of them respectively.*

The Deed contained the following provision for supplying vacancies in the body of Trustees:

It was thereby declared and agreed, that when any one of the Trustees should die, the survivors should elect in his room *such a person as they in their judgment and consciences should think fit*, who should be a Manager of the Trust Estates together and equally with the surviving Trustees, and have with them the same authority and power respecting the Trusts; and in case of the death of such elected Manager, to elect in like manner in his room *another like Manager;* and that the election of every such Manager should be entered in some or one of the books to be kept as thereinbefore directed; and that after two or three, at the most, of the Trustees should have departed this life, the survivors should add to themselves, as Co-Trustees with them, the Manager and Managers so elected as aforesaid, to make up the number of Trustees seven in the whole; and the surviving Trustees were then to convey the Trust Estate so as to vest it in the new body.

A full copy of this Indenture is set out in the Appendix.

By the latter set of Deeds (which bear date the 25th and 26th of April, 707), a newly-erected Almshouse and some additional Lands, also in e county of York, were conveyed by Lady Hewley to the same Trustees s those named in the first set of Deeds; and by an Indenture of the 6th of April, 1707, the Trusts of the latter property were declared to e as follows:

Upon Trust, that after the decease of the said Dame Sarah Hewley, the Trustees should permit the said Almshouse, with the buildings and appurtenances, to be used as an *Hospital for poor people*, in such manner as the same then was, *subject to the regulations thereinafter mentioned*; and that the Trustees and the Managers for the time being should, out of the rents and profits of the residue of the

said premises, pay all costs and expenses of the said Trustees, concerning the reparation of the premises, or collecting the rents and profits thereof, or providing Catechisms for the poor people in the said Hospital, or in the execution of the Trusts thereby declared, or the management of the Trust Estate: and out of the rents and profits of the residue of the premises should raise the clear yearly sum of 60*l.*, and distribute and dispose of the same for the benefit and support of the poor people placed, or which the Trustees and Managers for [3] the time being, or any four or more of them, should from time to time place, in the said Hospital, in such proportions, and at such times and to such purposes as the said Dame Sarah Hewley had declared, or should thereafter declare, in any writing signed by her, or in any rules appointed or to be appointed by her, or by her order, to be signed by her, for the choosing and government of the said poor people. And that the said Trustees and Managers for the time being, or any four or more of them, should, after the decease of the said Dame Sarah Hewley, place to the number of ten poor persons in the said Hospital, whereof nine to be always poor widows or unmarried women, so long as they should continue such, being of the age, each of them, of fifty-five years or upwards, and the tenth person to be a sober and pious poor man, who might be fit to pray twice a day, every morning and evening, with the rest of the poor of the Almshouse; and in default thereof, the tenth to be a poor woman, qualified as the other nine: and also that the Trustees and Managers should pay to each of the said ten poor persons 10*s.* upon the first day of every almanack month.

The Deed contained the following provision for supplying vacancies in the body of Trustees:—

That when any of the Trustees should die, the said Dame Sarah Hewley, during her life, and after her death the surviving Trustees, should elect in the room of every such deceasing Trustee *such person of reputation as they should approve of*, to be a Manager of the Trust Estate equally with the surviving Trustees, and to have equal authority with them; the election of every such Manager to be entered in a book to be kept as thereinafter mentioned; and that after two, or three at the most, of the Trustees should have departed this life, the survivors should add to themselves, as Co-Trustees, the Manager or Managers so elected, to make up the number of Trustees seven in the whole; and the surviving Trustees were thereupon to convey the Trust estate so as to vest it in the new body.

The Deed then declared that the Trustees should, after the death of the said Dame Sarah Hewley, be the *only Special Visitors and Governors of the said Hospital*, and the poor persons therein; and that they, or any four of them, should have power to order, place in, and put forth of the said Almshouse, the poor persons to be placed in the same, pursuant to the said rules and orders.

The Deed contained a provision, that if the Trustees should be hindered or disturbed in their visitation or government of the said Hospital, or the poor people therein, by any civil, ecclesiastical, or other lawful authority, that then, so long as such hindrance or in-

terruption should continue, the Trustees and Managers should employ and convert the said 60*l.* to such other pious uses as the said Dame Sarah Hewley should, by writing, appoint, and in default of appointment, to such pious and charitable uses as thereinafter appointed.

The residue of the rents are then directed to be applied by the Trustees upon trusts in terms the same as the Trusts of the Indenture of the 13th July, 1704.

By an Indorsement on the last-mentioned Deed, under the hand and seal of Lady Hewley, dated the 10th of May, 1709, it is provided that the management of the Hospital, *as to the putting in poor women upon any vacancy*, should be vested in a set of Trustees distinct from the General Trustees, and that the latter (who are there called the *Grand Trustees*,) should, at the beginning of each year, place in their hands the money for paying the monthly allowances, and also what should be necessary for repairs.

A full copy of this Indenture, with the indorsement, is set out in the Appendix.

Two sets of Rules and Orders for the government of the Hospital appear to have been left by Lady Hewley.

The first are entitled, "Rules and Orders to be observed by the Trustees and the major part of them," and do not materially differ from the Trusts of the Indenture above set out.

The second are entitled, "Rules and Orders to be observed about the Qualities or Qualifications of the poor People to be elected into the Almshouse, from time to time," and are as follows :—

[4] "Let none be elected into the Almshouse who have a clear personal estate of above 60*l.*, or a real estate above the annual value of 3*l.* above all reprises, or near relations that are able in estate and bound by the laws of God and Nature to relieve them at home.

"Let all persons to be elected prove their age to be above fifty-five years, by good testimonials if required.

"Let none be admitted into the Hospital that cannot be conveniently separated; for their children must not be permitted to live with their parents in the Hospital, but in cases of infirmity and sickness, when they are bound in duty to minister to their parents' necessities.

"Let none of evil fame or report be admitted into the Hospital, but such as are *poor and piously disposed, and of the Protestant religion*, not given to strong drink, nor to gossipings: and such as have lived infamously in their youth, or have been justly blemished with any gross immorality, let them not so much as in old age be elected without good evidence of their repentance and amendment.

"Let all persons to be chosen bring certificates according to law, from the parishes or constabularies wherein they lived, that they were legally settled therein, that if they should forfeit their right to the Hospital, they shall be received into the parish whence they came.

"Let every Almsbody be *one that can repeat by heart the Lord's Prayer, the Creed, and Ten Commandments, and Mr. Edward Bowles's Catechism.*

"Let all the Almspeople, when not disabled by weakness, duly repair

to *some religious Assembly of the Protestant religion* every Lord's day, forenoon and afternoon, and at other opportunities, to attend the ordinances of God.

"Let them be ready to attend their Alms-sisters in their sickness, and to assist them by turn.

"Let no Almsbody receive any visits on the Lord's day, except in case of sickness; nor shall they show their rooms to any on that holy day.

"Let no Almsbody receive any servants into her house to bear ill reports out of the families where they are or have been servants.

"Let none of them be ever abused with strong drink, nor let any behave themselves uncharitably and unquietly with one another, by scolding or evil language; neither let them be busy-bodies, nor tatlers, nor tale-bearers, nor wanderers about from house to house, but keepers at home; nor common swearers, cursers, nor liars.

"Let each keep their own rooms clean, and all bear an equal share in the charge of cleaning all the places of common usage.

"Let no Almsbody be found begging from door to door, at home or abroad, or asking alms, yet may they gratefully accept anything that shall be freely given them by any; and if they should be found begging, let them be expelled the Hospital.

"None chosen and admitted to be Almspeople shall, after their admission, go abroad selling bread, eggs, cakes, or such little things, except of their own manufacture; and what by their hand-labour they can honestly acquire at home, they may enjoy.

"Let every Almsbody, morning and evening, in private devotion, commend themselves to God in prayer, and in their prayer remember their Foundress, Sarah Lady Hewley, while she lives, and after her death, pray for her Trustees.

[5] "If any of the Almspeople should offend against any of these rules relating to them, let them be admonished, first by any one of the Feoffees, and if that admonition prevail not, let them be admonished the second time; but upon the third transgression, it shall and may be lawful for the Trustees, or the major part of them, to remove and turn out such disorderly persons with their effects, and to choose another in their room.

"Let none be admitted into the Hospital that will not make the following engagement."

Then follows an engagement to observe the regulations, or to submit to be removed.

A full copy of both sets of rules is set out in the Appendix.

The Charity, it will be observed, embraces six classes of objects:

1. To assist POOR AND GODLY PREACHERS, for the time being, of Christ's Holy Gospel.
2. To assist POOR AND GODLY WIDOWS of the same description of persons.
3. To encourage and PROMOTE the PREACHING of Christ's Holy Gospel in poor places.
4. To assist in the EDUCATION of YOUNG PERSONS intended for the MINISTRY of Christ's Holy Gospel.
5. To assist POOR AND GODLY PERSONS IN DISTRESS.
6. The maintaining of the HOSPITAL.

The objects may be divided more generally into two classes:

1. Objects connected with preaching.
2. Objects not connected with preaching.

With regard to the *first general division*, there is, it will be observed, nothing in the language of the Deeds pointing at any one class of preachers rather than another; and according to the present meaning of the terms used, it would probably be held that Ministers of the Established Church of England were designated by the expression, "poor and godly preachers of Christ's Holy Gospel." It will be remembered, however, that the Trustees were directed to continue the allowances made by Lady Hewley herself previously to her decease. These allowances being (it is historically well known—and the St. Saviour's Gate Chapel, York, after mentioned, is one instance of this—), all made to Nonconformist Ministers (chiefly, if not exclusively, it is believed, English Presbyterians), they afford evidence (referred to in the Deeds, and therefore, it is conceived, of a nature strictly admissible), that according to the sense in which Lady Hewley has used the terms "godly preachers of Christ's Holy Gospel," Nonconformist Ministers were included. There can be no doubt, therefore, that upon the face of the Deeds (when all the facts are ascertained) Protestant Nonconformist Ministers were included.

Whether it is apparent on the face of the Deeds that the Charity was intended exclusively for Nonconformists might, according to the now sense of the terms used, reasonably admit of doubt. It is probable, however, that the expression, "godly preacher," according to the force of those terms at the date of the Foundation Deeds, denoted Nonconformist preachers as distinguished from Ministers of the Established Church. The term "godly" was originally, it is believed, applied by the Puritans to the preachers approved by them, and in Lady Hewley's time that term was still in use as applicable peculiarly to Protestant Nonconformist preachers. The term "preacher" also had then a peculiar meaning. The Protestant Nonconformist ministers were at that period looked at by others, and also seem to have regarded themselves, under the aspect of persons whose mission was to *preach* the Gospel, rather than to minister the ordinances and lead the public devotions of the people. Of this application of the term "preacher," the Act of Toleration affords a practical illustration, in which the ministers, for whose benefit that Act was passed, are described as "preachers and teachers." The term "poor" also aptly suited such [6] ministers, for whom no public provision was made, but who were left to draw their subsistence from the contributions of their hearers.

Whatever doubt might however have been entertained on this point, if the Deeds were now for the first time to receive their construction, that doubt is, it is conceived, entirely removed by the usage, evidence of which is always admissible to explain obscure or ambiguous expressions in an ancient instrument. The usage has been to confine the charity exclusively to Protestant Nonconformist ministers.

Assuming that, by the expression "poor and godly preachers," Protestant Nonconformist preachers were intended to be denoted, the language of the Deeds seems such as, from time to time, to embrace *the whole class of Nonconformist preachers for the time being*, without any restriction. Lady Hewley, as has been observed, herself belonged to

the denomination of English Dissenters called *Presbyterians*, and the Trustees named in the Foundation Deeds, so far as anything is known concerning them, belonged to the same denomination; but there is nothing in the Deeds to denote an intention by the Foundress, that her bounty should be confined to persons belonging to the same religious denomination with herself, or to persons agreeing with her individually in doctrinal opinion; and (as will presently appear) the Court below, in the decree which it has pronounced, does not seem to have considered that Lady Hewley entertained this intention; for the decree contains no declaration to that effect, nor does it direct any inquiry what were the doctrinal opinions of Lady Hewley, nor contain any provision for giving effect to such intention, supposing it to have existed.

With regard to the *second general division*, or, objects not connected with preaching, including the Almshouse, there is nothing to denote that the Trustees, in their selection of poor objects, were limited even to Dissenters. After disposing of so much of the Fund as they thought fit, to poor preachers and their widows, and for exhibitions to students, and for promoting preaching in poor places, they were to employ all the surplus in relieving such godly persons in distress, being fit objects of the said Dame Sarah Hewley's *and the Trustees' Charity*, as the Trustees for the time being should think fit.

The qualifications for the Almspeople, and the regulations for the government of the Hospital, do not denote that the Almspeople were intended to be exclusively Dissenters: all that was required was, that they should be "poor and piously disposed, and of the Protestant religion;" that they could repeat by heart the Lord's Prayer, the Apostles' Creed, the Ten Commandments, and Mr. Bowles's Catechism; and that they should repair to "some religious assembly of the Protestant religion."

In the provision for the appointment of new Trustees, it will be observed also, that no qualification of a theological or sectarian character is imposed. In the case of the *Grand Trustees*, the surviving or continuing Trustees are to appoint, in the place of the deceased Trustee, "such a person as they in their judgment and consciences shall think fit;" and, in the case of the *Sub-Trustees*, they are to elect in the room of the deceased, "such a person of reputation as they in their judgment shall approve."

It will moreover appear, from what is stated in a subsequent part of this case concerning Lady Hewley's other Charities, that if it should be deemed proper, (which the Appellants do not contend for, but on the contrary submit would be improper), to go out of the Deeds in order to collect, by conjecture, from what is known of the character and sentiments of the Foundress, her intention with respect to the present Charity, there is no ground to presume that she intended that her bounty, in the present case, should be confined to Dissenters, or to persons professing her own doctrinal opinions.

The view which has above been taken of the construction of the foundation deeds has been taken and acted upon by the Trustees ever since the foundation of the Charity. With regard to that [7] part of the Charity which has for its object bounty to preachers and the promotion of preaching, the Trustees, in the exercise of the ample discretion with which they were invested, have distributed the funds indiscriminately among all classes of Protestant Nonconformist ministers; without regard

to the question whether the recipient belonged to the religious denomination of which Lady Hewley was a member, or whether he held the doctrinal opinions held or supposed to be held individually by Lady Hewley. And they have in like manner, pursuant to the injunction in the foundation Deeds, continued to pay stipends to the ministers of those congregations which were in the enjoyment of stipends in Lady Hewley's lifetime, so long as they appeared to the Trustees for the time being fit objects of charity; without reference to the question, what were from time to time the doctrinal opinions or the forms of Christian worship, or the systems of discipline maintained in those congregations.

At the time of the foundation of the Charity, the body of Protestant Nonconformists in England was divided, and it has ever since continued to be divided, into three principal sections, commonly called the THREE DENOMINATIONS, viz., the PRESBYTERIANS, the INDEPENDENTS or CONGREGATIONALISTS, and the BAPTISTS.

The terms Presbyterian and Independent, in their original signification, appear to have been expressive merely of different views of discipline and church government; and prior to the Restoration, there does not appear to have been any considerable difference of opinion among the members of these denominations on doctrinal points. Soon after the Restoration, differences of doctrinal opinion gradually sprang up between the two sects, which, after the passing of the Toleration Act, became wider and more marked, and soon after ended in a total separation of the two bodies. The Independents adhered to the doctrines which may be expressed generally by the term Calvinism, whilst the Presbyterians passed to those denoted by the term Arminianism.

The theological history of the latter portion of the 17th century is full of the doctrinal controversies prevailing between those two sects, which were carried on with no small degree of animosity and heat; most (if not all) of the other differences between these bodies having then ceased to exist. It appears that in the year 1691, an attempt at a reconciliation between the two sects was made by some of the leading and more moderate members of the two denominations; and what was called "the Happy Union" was set on foot; and a joint board of the two denominations was constituted in London, which board had the management of a fund raised for assisting Nonconformist preachers. The Happy Union, however, endured only three years, and in 1694 a final separation of the two bodies took place, and separate boards were established, which have ever since subsisted.

The English Presbyterians of the date of the foundation of the Charity, besides having deviated from the strict orthodoxy of their predecessors in name, were, in character and principle, entirely changed from the Presbyterians of the reign of Charles the First and the Commonwealth. They retained of their predecessors little but the name. From being, perhaps, the most intolerant of religionists, they had become, beyond question, the most tolerant. They had gradually abandoned, and had become the most determined opponents of, the practice of subscription to articles or systems of faith. They refused subscription except to the Scriptures. They framed their catechisms in scriptural expressions. They asserted the duty of free inquiry into the Scriptures and the right of private judgment in all doctrinal points, without any restriction. They adopted the practice of open communion, or ad-

mission to the communion table and membership, without requiring a confession of faith. To receive the Scriptures as the word of God, to endeavour to find the true sense of it, and to act according to it, was all that was required. The celebrated Dr. Calamy, an eminent Presbyterian Divine, and a personal friend of Lady Hewley, assigns this freedom, which he found existing in the nonconforming body, as the reason why he chose to exercise his ministry among them rather than in the Church. The Dissenting Ministers in and about London (of whom the greater part were Presbyterians) met together at Salters' Hall, London, 1719, (upon an occasion which will be hereafter adverted to,) for the purpose of determining what advice should be given to the Dissenters of Exeter, amongst whom Arian opinions had been manifested, and had [8] led to heats and dissensions, when it was proposed that the Paper of Advice should be accompanied by a declaration of their own faith in the Trinity as exhibited in the First Article of the Church of England. The proposition was rejected by the majority; they would have no declaration of faith, except in terms of the Scripture. This decision rested on no temporary or newly-formed principles or scheme of opinion. The experience of those who adopted it, and the formation of their opinions extended over the period in which Lady Hewley had lived. They thus solemnly recorded that the principles of freedom of inquiry, and of objection to every sort of doctrinal creed or restriction, which had been gradually developed among them for many preceding years, extended to what might be considered the extreme case of a doctrine so important as that of the Trinity, and their decision must be taken as an authoritative exposition of the views which their experience, extending in many cases back into the preceding century, had cherished and matured.

The consequence of acting upon these principles was, that great latitude of opinion prevailed amongst the persons calling themselves Presbyterians, without any means of ascertaining to what extent it prevailed, or of checking its further spread; and the result was, (and that in no long interval,) a still wider departure from the opinions originally held by them in common with the other dissenters from the Church of England. From Arminianism (which their opponents even then sometimes charged as "Socinianized Arminianism") they, in numerous instances, passed into Arianism, and from Arianism into what is now generally styled Unitarianism; and this is now almost universally the doctrine of the existing congregations founded by the Presbyterians of Lady Hewley's time, except where their chapels have connected themselves (as has sometimes happened) with the Calvinistic Presbyterian Churches of Scotland, or have passed into the hands of the Independents or other sects, as has also not unfrequently been the case. The body of English Presbyterians has however retained its identity and its name; and though holding and professing, in the case of the great majority of its members, Unitarian opinions, has been always treated and considered, and on public occasions recognised, as one of the three denominations of Protestant Dissenters from the Church of England.

When the change from Arminianism to Arianism, or from Arianism to Unitarianism, took place in the several Presbyterian congregations, it is, in most instances, impossible to ascertain with accuracy. In almost all cases it took place silently and gradually, and without any interruption of the harmony of the congregation. The difficulty of ascertaining

the period of the change is much increased by this circumstance, that, as the preaching of Antitrinitarian doctrine was at that time unlawful, the change was not, except in a very few instances, marked by the open preaching of Antitrinitarian doctrine, but rather by the Presbyterian ministers gradually abstaining from preaching Trinitarian doctrine, and directing their preaching rather to the enforcing of the practical duties of Christianity than the discussion of controverted points of doctrine. That this was the character of their preaching is capable of proof; and also that it was a common topic of reproach to them, very early in the 18th century, that they refused openly to avow their opinions, and that, tacitly at least, they encouraged the Arian heresy.

An instance of the latitudinarianism and declension towards Unitarian opinions which has been mentioned, occurred in the Presbyterian congregation of the Saint Saviour's Gate Chapel, York, of which Lady Hewley was a member, and to which she was a liberal contributor; the chapel having been built mainly, if not wholly, at her expense. The Rev. Mr. Hotham was the assistant minister of this congregation in Lady Hewley's lifetime, and he continued to officiate in that chapel for more than forty years after her death. Towards the close of Mr. Hotham's ministry, the congregation made choice of the Rev. Mr. Cappe, a young minister of Arian sentiments, to be assistant preacher, and Mr. Cappe subsequently became the sole minister of the congregation. From the circumstance of the congregation making choice of Mr. Cappe, as their minister, there can be little doubt that the prevailing opinions of the congregation at that time were Arian; and these must either have been the opinions of the congregation in Lady Hewley's lifetime, or they must have been subsequently formed under the training of her minister Mr. Hotham. Mr. Cappe was immediately succeeded by the Rev. Charles Wellbeloved, the present minister of that congregation, who is one of the Trustees of the Hospital, and in that character a Defendant to the present suit.

Although the change to Arianism in many of the Presbyterian congregations, deriving assistance [9] from the Charity, took place at a very early period after the death of Lady Hewley, if not during her lifetime, it does not appear that the Trustees, in any instance, withdrew the bounty previously enjoyed by the minister of the congregation which had become Arian. Indeed it may fairly be questioned whether, having regard to the direction contained in the Trust Deeds,—that the charitable dispositions existing at the death of Lady Hewley should be continued until the Trustees should see just reason to discontinue them,—the Trustees would have been justified in withdrawing stipends from the duly constituted ministers of congregations in the enjoyment of stipends in Lady Hewley's lifetime, simply on the ground of a change of opinion in the congregation on some doctrinal point. However this may be, the stipends were in all cases continued, notwithstanding changes of doctrinal opinion in the congregation; and they have been continued by the subsequent Trustees down to the filing of the present information; the present Trustees not only feeling themselves justified in treading in the path of their predecessors, but, being advised that the ample discretion vested in them by the Foundress extended to all regularly constituted dissenting ministers, (being in other respects fit objects of the Charity): and in this manner it has come to pass, that although a very

large proportion of the stipends given by the Trustees, at the time of the institution of the present suit, were given to dissenting ministers of different denominations holding Trinitarian opinions, yet a considerable number of such stipends were also enjoyed by ministers professing what are commonly called Unitarian opinions. This is the principal grievance complained of in the suit.

At the time of the institution of the suit, five exhibitions, or annual donations to young men designed for the ministry, were given by the Trustees. Of these five, four were given to students resorting to the Presbyterian College, called Manchester College, at York, and one to a student resorting to the Independent College at Rotherham in Yorkshire. The resort of these students to Manchester College, which is alleged to be a Unitarian institution, is the other main subject of complaint. It is unquestionable that Trinitarian doctrines are not inculcated at this College. It appears, however, to be the only publicly recognised Presbyterian College at present existing in the North of England. It was originally founded in 1757, at Warrington, by the Presbyterians of Lancashire and the adjoining counties, who invited Dr. John Taylor, an eminent Presbyterian Minister then settled at Norwich, to be the theological tutor. From Warrington it was removed to Manchester, where Dr. Barnes and Mr. George Walker were the theological tutors; and from Manchester it was removed, in 1803, to York, when it was placed under the direction of the present theological tutor and principal of the College, the Defendant, Mr. Wellbeloved, who, as has already been observed, is the Minister of the Presbyterian Congregation at York, of which Lady Hewley was a member.

The body of Trustees, who were originally Presbyterians, as has been stated, have been from time to time, as vacancies occurred, filled up (with scarcely one exception) from members of the same denomination; and the present Trustees, with the exception of one who is a member of the Church of England, all belong to the same denomination.

Assuming that the intention of Lady Hewley, to be collected from her foundation deeds, was not to require that all the objects of her and the Trustees' bounty, from time to time, should be selected from persons holding the same doctrinal opinions with herself, but that she intended to give to the Trustees for the time being (as the language of the deeds would seem to import) an unlimited power of selection from the whole class of Protestant Nonconformist Ministers for the time being, who should make the Gospel of Christ the foundation of their faith, it is obvious that there is nothing illegal in such an intention; and it is equally obvious that, from a Charity so comprehensive, Protestant Nonconforming Ministers professing Unitarian opinions are not now excluded; such Ministers being, since the Act of the 53rd of the late King, c. 160, in contemplation of law, "Preachers for the time being of Christ's Holy Gospel," as fully, to all intents and purposes, as any other class of Nonconformist Ministers for the time being.

That, in contemplation of law, Nonconformist Ministers professing Unitarian opinions are "preachers for the time being of Christ's Holy Gospel," will be apparent from a very short examination [10] of the law affecting Protestant Dissenters from the period of the Restoration down to the present time.

Between the passing of the Act of Uniformity and the Act of Tolera-

tion (1st Will. and Mary, c. 18), no person could be considered, in law, as a preacher of Christ's Holy Gospel, unless he were in strict communion with the Church of England.

By the Toleration Act the public worship of Dissenters was authorized upon certain conditions, of which the principal were, that their preachers should take the oaths of Allegiance and Supremacy, and should declare their approbation of and subscribe the Articles of Religion mentioned in the 13th Elizabeth, c. 12, except the 34th, 35th, 36th, and part of the 20th Article. Besides the subscription thus required, it was further declared that no ease, benefit, or advantage should be thereby given to persons denying the doctrine of the Trinity: and by the 9th and 10th Will. III. c. 32, certain penalties and disabilities are inflicted, upon conviction, in the manner therein mentioned, of persons who should by writing, printing, teaching, or advised speaking, deny any one of the persons in the Holy Trinity to be God.

After the passing of the Toleration Act, therefore, and down to the passing of the 19th Geo. III. c. 44, preachers qualified in the manner required by the Toleration Act, and abstaining from impugning the doctrine of the Trinity, and no others, could be considered in law as preachers for the time being of Christ's Holy Gospel.

By the 19th Geo. III. c. 44, after reciting that many preachers and teachers of congregations for dissenting Protestants scruple to declare their approbation of, and to subscribe the Articles mentioned in the Toleration Act, for ease of such scrupulous persons, the following declaration is substituted to be subscribed, in lieu of the Articles in question.

> "I, A. B., do solemnly declare, in the presence of Almighty God, that I am a Christian and a Protestant, and, as such, that the Scriptures of the Old and New Testament, as commonly received among Protestant Churches, do contain the revealed will of God; and that I do receive the same as the rule of my doctrine and practice."

After the passing of this Act, Nonconformist preachers subscribing the above general declaration of belief in the divine authority of the Scriptures, and abstaining from impugning the doctrine of the Trinity, would, though in a very different position from the Nonconformist preachers of Lady Hewley's time, be still, in contemplation of law, preachers for the time being of Christ's Holy Gospel. But though ease was thus given to many scrupulous persons with reference to certain tenets, there was still restriction remaining with respect to one tenet, viz. the article of the Trinity; and no Minister openly impugning this doctrine could, in strict propriety, be considered a preacher for the time being of Christ's Holy Gospel.

This restriction was removed by the 53rd Geo. III. c. 160. By this latter act (which in form is supplementary to the 19th Geo. III.—reciting the passing of that Act as its foundation—), the clause in the Toleration Act excluding persons denying the Trinity from the benefit of the Toleration Act, and so much of the 9th and 10th of Will. III. as relates to persons denying the Trinity, are repealed.

Since the passing of the last-mentioned Act, therefore, all Nonconformist preachers, whether or not professing Unitarian opinions, taking the oaths and making the declaration required by the Toleration Act and the 19th Geo. III. respectively, are, in contemplation of law, preachers for the time being of Christ's Holy Gospel. It is not disputed

that Dissenting Ministers of Unitarian opinions comply with these requisitions.

Whether the true construction of the Foundation Deeds be such as has been suggested, viz. that the Charity embraces all classes of Protestant Nonconformist Preachers for the time being, in the discretion of the Trustees, or whether it is to be confined to any, and if so, to what particular class, to the exclusion of others, is one of the principal questions for the decision of the House of Lords.

The other principal question is, Whether, if it be determined that the Charity is to be limited to preachers of a given denomination, or professing given doctrinal opinions, the Trustees are in that case to be required to be of the same denomination, or professing the same doctrinal opinions; the Deeds containing (in any view of their construction) no such requisition.

[11] Other points of subordinate importance arise, calling also for decision, which will be subsequently noticed.

His Majesty's Commissioners appointed under the 58th Geo. III. c. 91, and the 5th Geo. IV. c. 58, for inquiring concerning Charities in England and Wales, having inquired into this Charity, by their Report state as follows:

"It does not appear to us, on inquiry into the administration of the "Charity, and examination of the books of account, &c., that the "Trusts are otherwise than *duly performed in all essential parti-* "*culars*, unless it is to be considered a departure from Lady Hew- "ley's intention, that *part of the revenues* should be applied in "favour of Dissenting Ministers who entertain and preach Socinian "or Unitarian doctrine of faith, or in the allowance of Stipends to "Widows of such Ministers, and Exhibitions to Students brought "up in those sentiments."

And in conclusion, they say,

"We think the question which has arisen in this case ought to be sub- "mitted to the consideration of a Court of Equity, in order that a "judicial declaration may be pronounced as to the proper mode of "administering and dispensing the Charity, in the particular re- "spect above noticed, and such directions may be given, as the "case may require, for securing its proper administration in "future."

It appears that on this Report being submitted to His Majesty's then Attorney-General, he did not concur in the view taken by the Commissioners, and he declined to file an Information of his own authority, as the proceeding of the Crown; and the present Information was thereupon prepared at the instance of the Relators above named, as Respondents, *who are members of the Independent denomination*, and filed with the sanction of the Attorney-General.

The Defendants to the Information are as follows:—

OF THE GENERAL OR GRAND TRUSTEES.

- SAMUEL SHORE, Esq., of Norton Hall, near Sheffield, whose grandfather was appointed a Trustee in 1755.
- OFFLEY SHORE, Esq., a son of Mr. Samuel Shore.
- JOHN PEMBERTON HEYWOOD, of Wakefield, Esq., M.A., Camb., and Barrister-at-law.
- PETER HEYWOOD, Esq., M.A., Camb., and Barrister-at-law, a son of Mr. John Pemberton Heywood.
- THOMAS WALKER, of Killingbeck, near Leeds, Esq., a Magistrate of the West Riding.
- DANIEL GASKELL, of Lupset Hall, near Wakefield, Esq., M.P. for Wakefield.
- JOHN WOOD, Esq., Barrister-at-law, Chairman of the Board of Stamps and Taxes.

All of them members of old Presbyterian families, and now belonging to the Presbyterian denomination.

OF THE TRUSTEES OF THE HOSPITAL.

- The Rev. CHARLES WELLBELOVED, Dissenting Minister of the Presbyterian Congregation in the St. Saviour's Gate Chapel, York.
- The Rev. JOHN KENRICK, of York, a Dissenting Minister of the Presbyterian Denomination.
- THOMAS BISCHOFF, Esq., of Leeds.
- VARLEY BEALBY, Esq., of York.
- JOSEPH HENRY OATES, Esq., of Leeds.
- GEORGE PALMES, Esq., of Naburn, near York.

All of them, with the exception of Mr. Palmes, (who is a member of the Church of England,) Dissenters belonging to the Presbyterian Denomination.

[12] The Information was originally filed against the two Mr. Shores, the two Mr. Heywoods, Mr. Walker, and Mr. Gaskell, of the Grand Trustees, and Mr. Wellbeloved alone of the Sub-Trustees.

It was subsequently, after those Defendants had answered, amended; and Mr. Wood, as a Grand Trustee, and Mr. Kenrick, Mr. Bischoff, Mr. Bealby, Mr. Oates, and Mr. Palmes, as Sub-Trustees, were added as Defendants.

The alterations introduced by amendment, which are very considerable, are denoted in the copy of the Information (set out in the Appendix) by being printed in Italics.

THE AMENDED INFORMATION states, amongst other things,

That Lady Hewley was the widow of Sir John Hewley, Member of Parliament for the City of York in the 29th, 30th, and 31st years of the reign of King Charles II.

That she was in those times considered to be, and was called by those of the same religious sentiments, a godly person, and was a dissenter

from the Established Church, and that she was in her religious belief a Calvinist and Trinitarian.

That she belonged to the congregation or attended the meeting-house or chapel in St. Saviour's Gate, York, which was partly endowed by her.

That Dr. Coulton and the Rev. Mr. Hotham were the first preachers at that chapel.

That during the time of the religious persecutions of the English Presbyterians and Independents and other persons calling themselves godly Dissenters from the Established Church, in the reign of Charles the Second, Lady Hewley stood forward as the protector and supporter, in Yorkshire, of the ejected ministers of St. Bartholomew's Day, 1662, under the Act of Uniformity of the 13th and 14th of Charles the Second, and of the persons calling themselves godly who were Nonconformists, and *who were subject to pains and penalties in those days for their form of religious worship.*

That her charitable works were specially extended to the poor and ejected Ministers and Nonconformists of those days, and that she is mentioned in the diary of Oliver Heywood, one of the most zealous of the Nonconformist and ejected Ministers.

That being minded and disposed to devote her property to the purposes mentioned in the Foundation Deeds, she had frequent conferences with her friends on the subject, as well as consultations with Counsel, under whose advice, and after long and mature deliberation, and several years before her death, she entered into and executed the Deeds thereinafter mentioned.

The Information then sets out the Indentures of 1704 and 1707, and the rules left by Lady Hewley for the government of the Hospital, the substance of which has been already stated.

It then states that Richard Stretton, the Trustee first named in the said Indentures of Trust, was a Nonconformist of considerable note in those times, and that he is recorded in Calamy's Nonconformist's Memorial of Ministers.

That Dr. Coulton, the original preacher at St. Saviour's Gate Chapel, whose ministry Lady Hewley attended, and who was her friend and spiritual adviser, and sole executor of her will, is named as another of the said original Trustees and also a Manager of the Hospital; and that the Rev. Mr. Hodson, who is named a manager of the Hospital, was one of the attesting witnesses to Sir John Hewley's will, and the private Chaplain of Lady Hewley; and that the other Trustees and Managers of the Hospital were men who in those times were called, by persons of the same religious persuasion, godly persons; and that all the original Sub-Trustees and Managers were dissenters from the Established Church, and at the date of the Deeds and Indorsement nominating and appointing them, and at the death of Lady Hewley, were persons within the protection and entitled to the benefit of the Act of Toleration of the 1st of William and Mary, and were none of them subject to the penalties of the Act against Blasphemy of the 9th and 10th of William III.

That Mr. Bowles's Catechism was well known amongst Dissenters at that time, and that a tenth edition thereof was printed and sold by John White, of the city of York.

That Lady Hewley continued to be a godly Dissenter from the Established Church to the day of her death; and that she was attended in

her last illness by Dr. Coulton; and that she made and published her last will and testament in writing, commencing with the following remarkable words: "Having first committed my immortal soul into the hands of my dear Redeemer, to be washed in his blood and made meet to be partaker of the inheritance of the saints."

[13] That she died on the 23rd of August 1710, and that Dr. Coulton preached her funeral sermon.

That new Trustees of the Charities and new Managers of the Hospital were from time to time chosen and appointed, and the Charity Estates and Premises conveyed to them by the survivors of the said original Trustees and Managers and their successors. And that the fifth appointment and conveyance to new Trustees took place some time in the year 1755, when the then survivors chose and appointed Samuel Shore, Aymor Rich, and Thomas Lee to be new Trustees.

That the said Samuel Shore, Aymor Rich, and Thomas Lee were persons of considerable wealth and influence, and that they were the friends and patrons of a young Dissenting minister, then in indigent circumstances, called the Rev. Newcome Cappe, and who had been educated at an Independent College, and, by their interest, obtained the said Rev. Newcome Cappe to be appointed the Assistant of the Rev. Mr. Hotham, as the Preacher at St. Saviour's Gate Chapel, in November, 1755, being a short time before Mr. Hotham's death, Mr. Hotham then being of great age; and also that Mr. Cappe should be the sole preacher of the chapel after the death of Mr. Hotham, in May, 1756, there having been formerly always two preachers at St. Saviour's Gate Chapel; and that Mr. Cappe became a great favourite with the new Trustees; and that Mr. Cappe *was, or shortly after his appointment to be the Preacher of St. Saviour's Gate Chapel became, an Arian*, and afterwards what is now commonly called a Unitarian.

That Robert Moody, one of the Trustees, died in the month of May 1767; and that upon Mr. Moody's death the Charities fell entirely into the hands of Trustees belonging to the class or denomination of Christians now commonly called Unitarians; and that the Reverend Newcome Cappe and his party managed and conducted the Almshouse and Hospital; and that the family of the Shores have, ever since the year 1756, been and still are Trustees of the Charity; and that the Rev. Newcome Cappe continued to be a Sub-Trustee or Manager of the Hospital, and continued to receive a stipend as a poor and godly preacher to the time of his death, which happened in the year 1799, and that he left the congregation of St. Saviour's Gate Chapel, whom he had found strict Calvinists in their religious belief, changed to be what are now commonly called Unitarians.

The following is the statement as to the appointment of the Defendants as Trustees, and as to their religious opinions:—

That the last appointment and conveyance to new Trustees of the said Charity estates was by Indentures dated respectively the 10th and 11th, and 11th and 12th days of May 1824, when the said Charity estates were conveyed and assigned to Samuel Shore the elder, of Mears Brook, in the County of Derby, Esq., since deceased; Samuel Shore the younger, of Norton Hall, near Sheffield, Esq.; John Pemberton Heywood, of Wakefield, Esq.; Thomas Walker, of Killingbeck Hall, near Leeds, Esq.; Daniel Gaskell, of Lupset House, near Wakefield,

Esq.; (four of the Defendants hereinafter mentioned); and William Walker, of Middleton Lodge, near Doncaster, Esq., since deceased, and Thomas Lee, of Leeds, Esq., as the Trustees and Managers of the said Charities; and that on the 4th day of May 1829, Offley Shore, of Richmond Hill, near Sheffield, another Defendant hereto, the son of said Samuel Shore the younger, was appointed a Manager of these Charities in place of said Samuel Shore the elder; and Peter Heywood, of Wakefield, in the County of York, Esq., another Defendant hereto, was at the same time appointed a Manager in the place of the said Thomas Lee, who relinquished the Trust by reason of his infirmities; and that John Wood, of the Inner Temple, London, Esq., another Defendant hereto, hath been appointed a Trustee in the place of the said William Walker, deceased; and that by the last appointment of new Sub-Trustees or Managers of the said Dame Sarah Hewley's Hospital or Almshouse, the Sub-Trustees or Governors of the said Hospital or Almshouse thereby nominated and appointed are George Palmes, formerly of Naburn, near York, now resident somewhere abroad, out of the jurisdiction of this Honourable Court; and the Reverend Charles Wellbeloved; the Reverend John Kenrick, both of the City of York; and Varley Bealby, Esq., of or near York; and Thomas Bischoff, and Joseph Henry Oates, both of Leeds (five other Defendants hereinafter mentioned).

That, *save and except the said John Pemberton Heywood, Peter Heywood, George Palmes, and John Wood,* each and every one of the said Trustees and Managers, Sub-Trustees, and Governors of the said Charities hereinbefore last named, is or was in his religious belief what is commonly called a Unitarian, and is or was a member of or belonged to the sect, or class, or denomination of Christians commonly called Unitarians, and attended or attends a congregation or chapel commonly [14] called or passing under the ordinary and popular appellation of a Unitarian congregation or chapel, or attended or attends a chapel where doctrines of the Unitarian persuasion were or are preached or taught, or where doctrines commonly called or taken or believed to be Unitarian were or are preached or taught.

The Information then states, that Mr. Wellbeloved succeeded Mr. Cappe as the preacher at St. Saviour Gate Chapel, on his death in 1799, and that he is now the preacher of St. Saviour Gate Chapel, and that he is what is commonly called a Unitarian minister, and preaches Unitarian doctrines in the chapel, and that the congregation attending the chapel are Unitarians.

The Information then states, that the annual rents and profits of the Charity estates amount to the sum of 2900*l.* or thereabouts, and that a great part of the said rents and profits are now applied by the present Trustees, Sub-Trustees, and Managers, in and towards the support and propagation of doctrines commonly called Unitarian, by giving stipends to the ministers, and to the widows of ministers, and to the members of congregations of the sect or class or denomination of Christians commonly called Unitarians, and by sending formerly six exhibitions, and afterwards five, to students at the Manchester College at York.

That the said College is commonly called the Unitarian College at York, and is an establishment supported by the sect, or class, or denomination of Christians commonly called Unitarians.

That the said funds are further misapplied by making an allowance to

the Reverend C. Wellbeloved of 80*l.* a year as a poor and godly preacher of Christ's Holy Gospel.

That the qualifications required by Lady Hewley for the admission of the Almswomen to the Hospital, and the rules directed by her to be kept there have been totally disregarded by the Sub-Trustees or Managers of the Hospital.

The Information then charges, that the Defendants, *Samuel Shore the younger, Offley Shore, Thomas Walker, Daniel Gaskell, the Reverend Charles Wellbeloved, the Reverend John Kenrick, Thomas Bischoff, Varley Bealby, and Joseph Henry Oates* are wont to term or call themselves Unitarians.

It charges, that the great body of Dissenters, distinguished in those times by the names of Presbyterians, Independents, and Baptists, differed among themselves solely on questions or articles of church government, and as to its divine origin and power, and as to forms and ceremonies; and that upon articles of faith and the object of religious adoration or worship they were all agreed among themselves and with the Established Church, and as evidence thereof, refers to the confession of faith and larger and shorter catechism prepared by the Assembly of Divines.

It further charges, that the sect, or class, or denomination of Christians commonly called Unitarians reject, as utterly unscriptural, each and every one of the following doctrines, (that is to say,) the Trinity of persons in the Deity; the Incarnation, or true and perfect divinity of the person of the Son of God; that the Son of God is the second person in the Trinity, and equal with the Father; the divinity and personality of the Holy Ghost or Holy Spirit as the third person in the Blessed Trinity, and equal with the Father and the Son; the forgiveness of sins, and salvation through the merit of the atonement; the atonement or satisfaction for sin made by the death of Christ; that Jesus Christ is really and truly God, and as such the proper object of religious worship; and the doctrine of original sin, or that man is born in such a state that if he were to die in the condition in which he was born and bred, he would perish everlastingly; and that each and every one of the doctrines aforesaid is rejected as utterly unscriptural by the Defendants, the Reverend Charles Wellbeloved and the Reverend John Kenrick.

It charges, that the Defendants, the acting Trustees and Managers of the Charities, have shown an undue preference to Unitarians, and that the funds of the Charities have been applied in support of the cause of Unitarianism, to the neglect and prejudice of the true objects of the Charities.

The Information then makes the following charge concerning a chapel at Rossendale, Lancashire :—

That the said chapel being considerably in debt, an application was made to the Trustees of Lady Hewley's Fund for assistance; that the [15] Trustees received a memorial, stating at length the doctrines held and taught by the applicants, and upon the said memorial granted a sum of 12*l.*, which hath been continued annually, and that the said memorial contained the following passages: "We began to examine the doctrine of original sin as commonly taught, and we thought we saw sufficient reason to discard such an unscriptural, irrational doctrine. We proceeded to examine the doctrine of atonement; we cast this ancient

piece of orthodoxy to the moles and to the bats. Al this we relin quished the doctrine of the divinity of Christ; indeed, lace at whic we are now arrived is supposed by our orthodox ne urs to be th mystery of iniquity," as by the said memorial, w produced, woul appear.

With regard to the Hospital, the Information charges—

That the doctrines of what is commonly called Unitarianism have been introduced into the Almshouse or Hospital, and that the repeating the Creed and Mr. Bowles's Catechism is no longer required as a qualification for admission to the Hospital, and that no catechism is now taught or used in the Hospital, and that the Almswomen attend a chapel where what are commonly called Unitarian doctrines are preached.

It charges that the Defendants only send five exhibitions from the Charities, and only one thereof, within the years 1828 and 1829, to a Trinitarian Dissenting College.

And the Information prays:—

That it may be declared by the decree of the Court, that ministers or preachers of what is commonly called Unitarian belief and doctrine, and their widows, and members of their congregations, or persons of what is commonly called Unitarian belief and doctrine, are not fit objects of Lady Hewley's Charity; and that exhibitions to Manchester College, or to any other College or School where what is commonly called Unitarian belief or doctrine is taught or inculcated, are not fit exhibitions for promoting the educating of ministers of Christ's Holy Gospel, within the intent and meaning of Lady Hewley's Charities. That the allowance of 80*l.* to the Defendant Mr. Wellbeloved, as the preacher of St. Saviour's Gate Chapel, was, and is, an unfit allowance or distribution of the Charity funds, by reason of his having been, and now being, one of the Sub-Trustees or Managers of a part of the Charities, and by reason of his not being a poor preacher, and not being a godly preacher of Christ's Holy Gospel, within the intent and meaning of Lady Hewley's Charity, and by reason of what is commonly called Unitarian belief and doctrine being now preached and inculcated in St. Saviour's Gate Chapel; and that such allowance of 80*l.* be wholly discontinued in future; and that such order may be made as to the past payments of the said allowance of 80*l.* to the Defendant Mr. Wellbeloved, as to the Lord Chancellor shall seem just. And that all the objects of Lady Hewley's Charities may be decreed fairly, and in such manner to participate in the Charity funds as she meant and intended, and in particular, that a fair and just proportion thereof may be distributed to and amongst poor godly widows of poor and godly preachers of Christ's Holy Gospel, giving preference to York, Yorkshire, and the Northern counties, and that a fair and just proportion thereof may be applied for the encouraging and preaching of Christ's Holy Gospel in poor places; and that Lady Hewley's qualifications and conditions for the admission of almswomen to the Hospital or Almshouse, and her rules for the management and regulation of the Hospital, or such of them as to the Lord Chancellor shall seem meet, may be restored or enforced in future in such manner as the Lord Chancellor shall be pleased to direct; and that His Lordship will be pleased to declare, by the decree of

the Court, that such Dissenters alone as are now commonly called Orthodox Dissenters, and as would have been within the protection of the Act of Toleration of the 1st of William and Mary at the time of the foundation of the Charities, and would not then have been subject to the penalties of the 9th and 10th William III. against Blasphemy, can now be considered as coming within the intent and meaning of Lady Hewley, and as entitled to participate in the benefit of her Charities; and that the Defendants, the present Trustees, Sub-Trustees, and Managers of the Charities, or such of them as to His Lordship shall seem proper, may be removed by the decree of the Court from being Trustees, Sub-Trustees, or Managers of the Charities.

[16] The Defendants, THE GRAND TRUSTEES, by their ANSWER to the original Information, amongst other things say:—

They believe that Lady Hewley belonged to the class of Dissenters called Presbyterians, and that many of the Presbyterians of that period were Trinitarians; but save from the probability arising from such last-mentioned circumstance, they cannot say whether Lady Hewley was in her religious belief a Trinitarian, but they say that, according to the best of their information and belief, she was not in her religious belief a Calvinist or Independent; and they say that Mr. Bowles's Catechism mentioned in the Information, and there referred to as containing the religious opinions entertained by Lady Hewley, does not, in the judgment of the Defendants, inculcate a belief in the Calvinistic doctrines of the Trinity, the Atonement, Predestination, Irresistible Grace, or the Perseverance of Saints. They add, that according to their information and belief, Lady Hewley was a person of very enlarged benevolence, and of great liberality and toleration of the opinions of others; and that in the relief extended by her to the suffering Nonconformists, she was not actuated by an exclusive regard to the peculiar creeds or religious sentiments of the objects of her bounty.

With regard to St. Saviour's Gate Chapel,—

They say, that it was a Presbyterian chapel, and that the teachers and ministers thereof were dissenters from the Established Church, and professed the doctrines common among the Presbyterians of that time, but what such doctrines were in particular they are unable to set forth; however, they believe that one distinguishing characteristic of that sect in England was, that they considered all persons eligible to communicate with them in the Holy Sacrament of the Lord's Supper who professed to believe in Christ's Holy Gospel. That they do not believe that either Lady Hewley or any of the teachers or ministers in the said Chapel were Independents, or followers of Calvin.

They say, they do not believe that the object of Lady Hewley in instituting the Charity was to promote or encourage the spread of any stated doctrines or form of Protestant worship in particular, but that in a spirit of general benevolence she was desirous of extending her bounty to the numerous classes of professing Christians who were then, or might thereafter be, struggling with persecution and pecuniary difficulties, by reason of their dissenting from the Established Church, insisting on liberty of conscience and the right of private judgment in matters of religion.

They say, that no Book or Minutes of the early Trustees and Managers

have come into the possession or to the knowledge of the Defendants, of an earlier date or period than the year 1729.

They state their ignorance of the circumstances of Mr. Cappe's appointment.

They give the following explanation of the stipend of 80*l.* paid to Mr. Wellbeloved:

They believe that Lady Hewley was, during her lifetime, a very liberal patron of St. Saviour's Gate Chapel, and that she made an ample provision for the Rev. Dr. Coulton, the minister officiating there during her lifetime; and they believe that upon the death of Dr. Coulton, the original Trustees and Managers of the Charity, and their immediate successors, in accordance with what they deemed to be the intention of Lady Hewley, and the spirit of her direction that the charitable dispositions or allowances made by her to persons or places in York should be continued after her decease, allowed and paid out of the funds of the Charity to Mr. Hotham, the successor of Dr. Coulton, as the Minister of the said Chapel, a stipend of 40*l.* a year; and they say they find in the Book before referred to, in which the receipts and payments of the Trustees are entered, commencing in 1729, several entries of half-yearly payments of 20*l.* to Mr. Hotham. They say, that, according to the best of their knowledge, information and belief, neither Dr. Coulton nor Mr. Hotham was a poor person; and that, according to the best of their belief, considering the interest taken by Lady Hewley in the Chapel, and her liberal patronage of the Dissenting ministers officiating therein in her lifetime, it was not the intention of Lady Hewley that the Minister of that Chapel should be a poor person, but that he should be a minister distinguished as well for learning and the respectability of his station in life, as for godliness. They add, that according to the best of their judgment, regard being had to the increased nominal amount of the rents and profits of the Charity estates, and the depreciation in the value of money, and to the change in the style and manner of living since the time when Mr. Hotham succeeded Dr. Coulton, the stipend of 60*l.* per annum allowed to Mr. Cappe during the time that the Defendant Samuel [17] Shore was a Trustee of the Charity, and the stipend of 80*l.* allowed to the Defendant Wellbeloved before the filing of the Information, is not more in proportion than the stipend of 40*l.* allowed to Mr. Hotham by the original Trustees of the Charity and their immediate successors.

They say, they believe that the Defendant Wellbeloved had been chosen by the Congregation at St. Saviour's Gate Chapel Assistant Minister to Mr. Cappe, and that he had officiated as such Assistant Minister for nearly nine years previous to his (Mr. Cappe's) decease, without any stipendiary allowance from Lady Hewley's Trustees; and that on Mr. Cappe's decease he was elected to succeed him as sole Preacher there, and they admit that he is now the sole Preacher there.

With regard to the Manchester College, they answer:—

That the College is an establishment chiefly supported by persons who call themselves Presbyterian Dissenters, and is for the purpose of educating ministers of that denomination;—that they believe that Unitarian sentiments are not required to be taught, and in fact are not taught, in the College, and that the students are not required or expected to profess

Unitarianism, either on their admission, or during their residence at, or on their quitting the College; and they say that the four exhibitions which, prior to the filing of the Information, were paid by them to students then pursuing their studies there, were, like all former exhibitions, paid to the students, and not to the College, and would have been continued to them in case of good conduct, although they removed to another academy.

They say, they are ignorant what are the particular religious opinions of any of the said four exhibitioners.

With regard to the Hospital they answer:—

That the management of the Almshouse or Hospital is conducted by the Sub-Trustees appointed for that purpose, pursuant to the directions of Lady Hewley, and that they do not interfere in such management; and they submit that they are not responsible for the same: they add, that they believe that the rules directed by Lady Hewley to be observed respecting the Hospital are now observed there as fully and strictly as circumstances will allow.

They give the following explanation as to the Rossendale Memorial:

They believe it to be true that a Memorial from Rossendale was presented to them, because it is required by their rules that a Memorial should be presented; but they say that such Memorial was not preserved, and they are unable to set forth the contents thereof: however, they do not believe that the same was to the purport or effect set forth in the Information, because, although they have no recollection of the particular purport of the Memorial so presented, they are convinced that if the same had been to the effect stated in the Information, the same would not have been recommended and signed, as is required, by two respectable neighbouring ministers; neither would the Trustees have given attention to such statements.

[The Defendants had stated in a former part of the Answer that it had not been the practice of the Trustees to preserve the memorials presented to them.]

The Defendants then state that, as Trustees of the Charity, they are willing and desirous to act under the directions of the Court; but they humbly submit that they ought not to be removed from being Trustees and Managers of the Charities; for they insist that they were duly appointed Trustees or Managers thereof, according to the directions contained in the original Deed of Trust; and they say, that since the period of their appointments respectively, they have severally conscientiously, and to the best of their ability, duly acted in the execution of the Trusts of the Charity, and they have, to the best of their judgment, in all respects acted in conformity with the spirit of Lady Hewley's directions regarding the management of the Charity. They say that Lady Hewley did not in the original Deeds of Trust, or in her rules for the management of the Hospital, or in any other documents, to the best of their knowledge and belief, give any direction regarding the peculiar mode of belief required to be entertained by the objects of the Charities, save that, according to the rules of the Almshouse, the Almswomen are required to be of the Protestant religion; and they say that, according to the best of their judgment and belief, the desire and intention of Lady Hewley, in founding the Charity, was to encourage the preaching and practice of pure Christianity, without any exclusive regard either to the

[18] peculiar forms of Protestant Dissenting worship, or to the peculiar doctrines inculcated by the different denominations or sects of Protestant Dissenters. They say, that in the selection of objects of the Charities, they have, to the best of their ability, acted in conformity with such intentions of Lady Hewley, and in compliance with the express directions contained in the Deeds of Trust, in so far as particular directions were therein given. They say, that it has not been their practice to inquire what were the particular personal religious opinions of the applicants for the assistance of the Charity, but that their inquiries have been always made with a view to ascertain as to the Preachers, whether they were sufficiently learned to read and understand the Holy Scriptures, and were men of such godly character and conduct as were likely, in their lives as well as by their preaching, to promote the practice of Christ's Holy Gospel, and were in such circumstances as to require pecuniary assistance from the Charity. And they say, that so far is it from being true, as alleged in the Information, that they have shown an undue preference to the Dissenters commonly called Unitarians, that they have ascertained, from inquiries made since the Information was filed, and they believe it to be true, that a very great majority of the Preachers and Widows who receive stipends from the funds of the Charity are what are commonly called Trinitarian Dissenters, and not what are commonly called Unitarians.

They add, that as to such of the objects of the Charity as attended places of Unitarian worship, or professed Unitarian sentiments, they cannot say what are their religious opinions; however they say that, to the best of their belief, all of them are of the Protestant religion, and believe in the divine mission and office of their Lord and Saviour Jesus Christ, and that the Holy Scriptures of the Old and New Testament contain the revealed will of God, and that they receive the same as the rule of their doctrine and practice.

They deny that any applications were made to them, before the Information was filed, to discontinue their stipendiary allowances, as is alleged in the Information; however they say, that since the filing of the Information they have discontinued the stipendiary allowances theretofore paid by them, although they do not admit that the same were improperly made by them, they being, in consequence of the filing of the Information, desirous, in the further execution of the Trust, to act under the direction and sanction of the Court.

Mr. WELLBELOVED answered very much to the same effect as the Grand Trustees.

With regard to his own preaching in St. Saviour Gate Chapel, he says:

That in St. Saviour Gate Chapel he hath always, to the best of his judgment and belief, preached the pure doctrines of Christ's Holy Gospel; that there is great diversity of opinion amongst persons professing Unitarian opinions, and there is amongst them no settled and admitted standard of belief save the Holy Scriptures: however he saith, that they all, to the best of his belief, believe in the divinity of the mission and office of the Lord Jesus Christ, and that the Holy Scriptures of the Old and New Testament contain the revealed will of God, and that they receive the same as the rule of their doctrine and practice. He says, that he hath in his preaching always inculcated the doctrines aforesaid; and he hath never held, or professed, or inculcated, any doctrine which is or

which, to the best of his information and belief, was ever judicially held o be blasphemous.

With regard to Mr. Cappe's preaching in St. Saviour Gate Chapel, he ays,

That Mr. Cappe was not in the habit of preaching, and very seldom reached, doctrinal sermons, but habitually urged upon his hearers love o God, faith in the Gospel of Jesus Christ, and the practice of holiness nd righteousness.

He concludes by stating, that in discharging the duty of a Sub-Trustee f the Charity, he hath always acted faithfully and conscientiously, and o the best of his judgment and ability; and in the further execution of he duties of the Trust he is ready and willing to act as the Court shall e pleased to direct.

In their Answer to the original Information, the Defendants answered ully as to all the particulars of their *conduct* in the administration of 19] the Charity, but they did not answer as to their individual religious pinions. The holding or professing of any given system of religious elief was not required by the Foundress as a qualification or test of fitess for the office of a Trustee;—the Defendants had not accepted the ffice of Trustee upon the understanding, expressed or implied, that they eld any given system of opinions as a qualification for that office;—hey conceived, therefore, and were advised, that the question as to their eligious belief was irrelevant. There was, it is believed, no precedent r the Court of Chancery's requiring a Defendant to answer on oath as o the particulars of his religious belief, and the danger and inconvenience f establishing such a precedent are obvious. If a Trustee or Manager f a Hospital founded by a Dissenter may, upon a suggestion that he olds some doctrinal opinion at variance with the supposed opinions of he Founder, be examined on oath as to the particulars of his religious elief, every Trustee or Manager of a Hospital or Charitable Institution ounded by a member of the Church of England, is liable, upon some uggestion of a want of orthodoxy, (perfectly groundless, perhaps,) to nswer on oath as to his belief concerning each of the Articles of the hurch of England. Even if any doubt could have been entertained as o the materiality of such a test, and the propriety of such an inquisition nto doctrinal belief as the Information called for, before the repeal of the est and Corporation Acts, it was conceived that the Court would adopt e principle of the Legislature in that repeal, and would not itself imose a religious test as a qualification for the office of a Trustee, where e Founder had imposed none.

The Relators took exceptions to the answers upon the ground that the efendants had not answered as to their individual doctrinal opinions, hich, being allowed by Lord Henley, the Master to whom they were eferred, were brought by the Defendants for review successively before e Vice-Chancellor and the Lord Chancellor. Both those Judges held at the Defendants were bound to answer as to their religious belief.

The reasons upon which these Judgments proceeded have not been eported.

The Defendants accordingly put in the further Answers set out in the ppendix.

The substance of the further Answers was as follows:—

Mr. WELLBELOVED states:

That the sense in which the term 'Unitarian' is used in the Information not being defined, [—the original Information did not contain the string of dogmas which form part of the amended Information—] he is unable to set forth whether he is a Unitarian in his religious belief and doctrine in the sense in which it is there used;—that he believes that very few persons agree in the definition of the term 'Unitarian,' and that sects maintaining very different religious opinions claim it for themselves;—that he does not agree in some very important points of doctrine with any sect that either takes to itself, or receives from others, the appellation of 'Unitarian;'—that he uniformly represents himself, and desires to be considered by others, as a Protestant Dissenter of the Presbyterian denomination, and as one who firmly believes in the Divine mission of Jesus Christ, and holds no other doctrines than those contained in Christ's Holy Gospel, to all of which he yields a full and cordial assent. He admits it to be true, that in the sense in which he uses the term 'Unitarian,' and which is thereinafter set forth, he is a Unitarian in his religious belief and doctrines;—that in using the term 'Unitarian' as applicable to himself, he means more especially to denote that he believes and professes the following Christian doctrines:—

The doctrines are then stated at length in the words of Scripture; and the Answer then proceeds as follows:—

That to the before-mentioned doctrines of Christ and his Apostles he gives his unqualified assent; and that whatever is taught in Christ's Holy Gospel concerning the existence, perfections, and government of God, the person and the office of Christ, the terms of pardon and acceptance with God, the duties of life, and a future state of righteous retribution, he gratefully and cordially receives and professes as divine truth; and, save as aforesaid, he cannot set forth as to his belief, or otherwise, whether or not he is a Unitarian in his religious belief and doctrine.

[20] He then states, that he is made a Defendant to the Information in his character of a Trustee or Manager of the Hospital;—and submits, that in his said character of a Trustee, it is wholly immaterial what are his particular religious opinions, and he humbly submits that he ought not to have been compelled to answer as to the particulars of his religious belief.

With regard to the Manchester College he states:

That the Manchester College, in the said Information mentioned, is supported chiefly by Protestant Dissenters of the Presbyterian denomination. That it is an establishment for the purpose principally of supplying the churches of that denomination with a succession of ministers, but not for the purpose of instruction in the peculiar doctrines of any sect. That no such instruction is given, but that the principle upon which the Institution is established and conducted is, that every student shall be left to the free and unbiassed exercise of his own private judgment in matters of religious opinion. That as theological tutor of the said establishment, he most scrupulously adheres to that principle, endeavouring to impart to his pupils such instruction only as shall qualify them to interpret the Scriptures for themselves, excite in them a love of truth, and a reverence for its dictates, and form in them a habit of searching the Scriptures. That it is his invariable practice solemnly to charge his pupils, when they enter on their theological course of studies there, in

the name of the God of truth, and of our Lord Jesus Christ, the Way, the Truth and the Life, in all their studies and inquiries of a religious nature, carefully, impartially and conscientiously to attend to evidence as it lies in the Holy Scriptures,—to embrace or assent to no religious principle or sentiment held or advanced by their tutor, or any one else, but as it shall appear upon the fullest examination to be supported by revelation,—to labour to banish from their breasts all prejudice, prepossession, and party zeal,—to study through life to live in peace and love with all their fellow Christians, and steadily to assert for themselves, and freely allow to others, the inalienable rights of judgment and conscience.

Concerning Mr. Bowles's Catechism he states:

That in his judgment Mr. Bowles's Catechism differs in some points of theology and religious belief very materially from the Catechism of the Established Church set forth in the book of Common Prayer. That among other discrepancies, the doctrine of the Trinity, which holds a very prominent place in the Catechism of the Church of England, does not at all appear in the Catechism of Mr. Bowles. That the answers in Mr. Bowles's Catechism are almost uniformly given in the words of Scripture, or nearly so, and the whole is drawn up with so much judgment, caution and moderation, that an Anti-Trinitarian catechist might use it. That according to the best of his knowledge, information and belief, Mr. Bowles's Catechism has been out of print above a century.

The Defendants THE TWO MR. SHORES and MR. WALKER, in their further answer, make a statement jointly of their religious belief, to the same effect as that made by Mr. Wellbeloved.

They then state severally as follows:

Mr. Samuel Shore and Mr. Offley Shore say they are members of the Dissenting congregation meeting in Norton, in the parish of Norton, in the county of Derby, which is called a Presbyterian congregation.

Mr. Walker says he is a member of the Protestant Dissenting congregation at Mill Hill Chapel in Leeds, in the county of York, which he believes to have existed more than a century and a half, and long before the term Unitarian was used, and upwards of half a century previous to the creation of Lady Hewley's Charities in question in this suit. That his grandfather was a dissenting minister at that Chapel eighty-three years since, and until the time of his death; and that his father William Walker subsequently attended divine worship in that Chapel until the time of his death, and that he hath always been a member of that congregation. He adds that he hath never adopted the appellation of a Unitarian, and never, to the best of his knowledge, differed in his religious opinions from those of his ancestors.

[21] Mr. JOHN PEMBERTON HEYWOOD answers as follows:

That he has always professed himself to be a Dissenter of the Presbyterian denomination. That his ancestors for many generations back have professed the Presbyterian religion, and in that religion he was brought up, and has, as far as he knows, held the same faith, which he hath never left nor changed or deviated from. That he holds no doctrines which are not received, as he believes, by all the moderate and respectable part of the Church of England; that he was from his earliest infancy taught the Lord's Prayer, the Apostles' Creed, and the Ten Commandments, which appear also to have been the foundation of the faith of Lady Hewley. That he has read, since this question was stirred,

a good deal of the works of his ancestor, Oliver Heywood, who, in the Information, is mentioned as the friend of Lady Hewley, and who was, as he himself states, very intimate with her, and he cannot find any material difference between the faith of the said Oliver Heywood and his own. That he was educated at Cambridge, where Dr. Paley was his tutor, and from the many conversations he had with him upon the subject, he can safely assert that there was little or no difference in their religious opinions. That his ancestors have been for more than a century members of a congregation who meet at Westgate, in Wakefield, in the county of York, who have always been called, by themselves and other persons, Presbyterians, till by the Relators, as he has heard, they were called Unitarians. That the said congregation have never adopted the name of Unitarians, nor do they, according to the best of his belief, hold any of the obnoxious tenets attributed to them by the Relators. That he has attended, and so did his father before him attend, the Established Church occasionally, to which he has always been friendly, and where he has frequently communicated, though he still continues to frequent and subscribe to the old Presbyterian congregation aforesaid. That he is now about seventy-five years old; has practised with some success as a barrister for above fifty years; has acted as a Justice of the Peace for the West Riding of Yorkshire near thirty years; has lived on good terms with all his neighbours, and is, he humbly conceives and submits, not unworthy to be a Trustee of a Charity, the object of which is to distribute money among poor godly preachers of the Gospel and to poor widows and to other poor persons.

Mr. PETER HEYWOOD says:—

That he is son of the last-named Defendant, and has been brought up in the same religious opinions; that he was educated at the University of Cambridge, and took his degrees there, and is still a member of Christ College in that University, and that he attends the Established Church more frequently than any other place of worship, and that he is not a member of any Unitarian congregation.

They all say they submit and insist, that in their character of Trustees of Lady Hewley's Charity, it is immaterial what are their particular religious opinions, and they humbly submit that they ought not to have been required to answer as to the particulars of their religious belief.

They say they believe that the Trustees originally appointed by the said Dame Sarah Hewley were all of that class of Dissenters called Presbyterians, to which class she herself belonged, and that with the exception of one or two instances of Church of England men and of Robert Moody, in their former answer mentioned, the Trustees have always been of that class of Dissenters.

Mr. GASKELL (who put in his answer separately, being abroad) answers to the same effect as the two Mr. Shores and Mr. Walker. He adds, that he is a member of the congregation meeting at Westgate in Wakefield, who have always been called, by themselves and other persons, Presbyterians, and who have never, as a body, adopted the name of Unitarians.

The reluctance evinced by the Defendants to answer as to the particulars of their religious belief, and the mode in which their answers were ultimately framed, has been the subject of much obversation. It is difficult to conceive, however, how they could with propriety, and con-

y with their principles, have conducted themselves otherwise than did. The Trustees were required, it will be remembered, to annot to a question of fact, whether they belonged to a given detion, or whether they had taken or subscribed a test prescribed Foundress, but—to answer, on oath, as to the particulars of eir religious belief; a proceeding for which, it has been already sugthere was no precedent. Much misunderstanding and misrepreon being prevalent with regard to the doctrines commonly deas Unitarian (which the *original* Information did not admit to stian doctrines, but rather implied to be open to the imputation phemy), it was obviously proper, in admitting the fact of their Unitarian opinions, to guard against any liability to misconn, and to show, that though holding Unitarian opinions, the Des were Christians, and consistent Protestant Dissenters of the erian denomination.

solving to adhere, in their answers, to the language of Scripture, endants conceived they were treading in the steps of those who considered as the fathers of English Presbyterianism, Baxter and . Baxter's advice is this: "God's word containeth in sufficient ions all that is necessary to be subscribed to; Require none re to subscribe to any more in matters of faith or holy practice." *er's Christian Directory*, fol. ed. 1701. vol. i. p. 779. Calamy, Chillingworth with approbation, says, "In a word there is no nt certainty but of Scripture only, for any considering man to pon; this, therefore, and this only, I have reason to believe .... e to me anything out of this book and require whether I believe and seem it never so incomprehensible to human reason, I will be it ..... I am fully assured that God does not, and therefore en ought not to require any more of any man than this: to believe iptures to be God's Word, to endeavour to find the true sense of to live according to its rules."—*Calamy's Life and Times*, vol. i.

The same principles were publicly avowed and acted upon on asion that has been already adverted to (*ante*, p. 7), by the Pres-n ministers, assembled at Salter's Hall, London, 1719, in con-n with the general body of Dissenting ministers in London, on the n of requiring subscription to the doctrine of the Trinity, which solved in the negative. An account of the proceedings on this occagiven in the History of Dissenters, by Dr. Bennett, one of the witon behalf of the Relators in this Cause, vol. iii. p. 226. *1st edition.*

r these further answers had been put in, the Relators AMENDED information, as has been already mentioned.

eir original Information the Relators had charged the holding of ian opinions, generally as a disqualification of the Trustees and ciaries, without suggesting the particular nature of the dogmas d to them. In their amended Information, as will have been ob- they suggest a string of dogmas, eight in number, as specific orthodoxy, and call upon the Defendants, and especially Mr. loved and Mr. Kenrick to answer, on oath, as to their reception ction of those dogmas.

Answers to the amended Information are set out in the Appendix. e answer of the Sub-Trustees, the Defendants Mr. WELLBED and Mr. KENRICK, in answer to the particular dogmas sugas tests, state in substance that as to many of those dogmas, they

do not find them, in terms, in the Scriptures. They then state their views of those dogmas, adhering to Scriptural expressions; and they add generally, that they receive and admit all the said doctrines so far as they agree with the Word of God, as contained in the Holy Scriptures.

With regard to the resemblance suggested in the amended Information between Bowles's Catechism and the Assembly's Catechism, they say that in their judgment Mr. Bowles's Catechism does differ materially from the Catechism of the Assembly of Divines, on points of theology and religious belief, inasmuch as Mr. Bowles's Catechism makes no mention of the doctrine of the Trinity,—of the Divine Decrees,—of Election,—of Effectual Calling,—of Justifying Faith,—of the Perseverance of Saints, and other points on which the Assembly's Catechism insists largely and strenuously. They add, that according to the best of their information and belief, the doctrines of Mr. Bowles's Catechism are in accordance with the religious faith of the denomination of Christians commonly called Unitarians, in all its principal points; and that, as far [23] as they know, or are able to ascertain, what are the doctrines which are held by the Protestant Dissenters called Unitarians, the only material difference between such doctrines and the doctrines inculcated in Mr. Bowles's Catechism, is, that the said Catechism teaches that man is by birth sinful, and liable to perish everlastingly, whereas the Protestant Dissenters called Unitarians believe that man is from his birth, by nature, frail and liable to fall into sin, but not that he will perish everlastingly for any sin of his birth, if he have not knowingly and wilfully transgressed the commands of God. They add, that in their judgment Mr. Bowles's Catechism does not differ, as to the object of religious adoration or worship, from the religious belief and doctrine of the Protestant Dissenters called Unitarians.

They all say that, according to the best of their belief, the doctrines held and professed by the persons adverted to in the Information as being commonly called Unitarians, and particularly the doctrines held and professed by the Trustees, Managers, and Sub-Trustees of the Charities, to whom Unitarian opinions are particularly attributed in the amended Information, approach more nearly to the doctrines contained in the Catechism of Mr. Bowles than do the doctrines of any other known sect or denomination of Christians of the present day.

With regard to the Almshouse, they answer as follows:—

That they have no knowledge or reason to believe, that the Assembly's Larger or Shorter Catechism was ever in use in the Hospital, and that Mr. Bowles's Catechism has not been rejected by them, inasmuch as it was not in use when they or any of them entered on their office. They say that none of the Almswomen do, on the Lord's Day, attend regularly at the Chapel of St. Saviour's Gate, and that one only of them attends there occasionally; and that none of them, to the knowledge or belief of the Defendants, attend any other chapel where what are commonly called Unitarian doctrines are preached; and that, according to the best of their information and belief, the doctrines of what is commonly or otherwise called Unitarianism have not been introduced into the Hospital or Almshouse.

With regard to the term Presbyterian, they answer as follows:—

The Defendants WELLBELOVED, KENRICK, BISCHOFF, BEALBY, and OATES, say that, according to the best of their information and belief, the term Presbyterian, as used by the Protestant Dis-

commonly called Unitarians, has a definite meaning as to ne, but they believe that the said term is not now used, nor, to t of their information and belief, was at any time used with refer-) doctrines; that they believe that the term Presbyterian is used Protestant Dissenters called Unitarians as it was used by the terians about the time of the Foundation of the Charities, to de- at those who bear it hold the Episcopal system of Church Govern- o be without warrant of Scripture. They add that the Protestant ters styled Presbyterians are distinguished from the other deno- ons of Dissenters by this, that they do not require from their rs a confession of faith, or a statement of their spiritual experience, ndition of communion, inasmuch as they consider such a proceed- not sanctioned by the Scriptures, and as not consistent with an liberty.

ı regard to their individual opinions, the Defendants KENRICK, IOFF, BEALBY, and OATES, admit the profession of Unita- ı in the sense explained by Mr. Wellbeloved. Mr. Kenrick adds, is not, and never has been, the minister of any congregation, and does not usually preach at any chapel, although he occasionally es in chapels of Protestant Dissenters of the Presbyterian deno- on.

PALMES states, that he is a member of the Church of England, es not belong to, or attend, any congregation commonly or ise called Unitarian.

Defendants KENRICK, BEALBY, BISCHOFF, and OATES, t since their appointment as Trustees or Managers of the Hospital, ve taken no active part in the execution of the Trusts, there been no new selection of Almswomen since their appointment.

Defendants THE GRAND TRUSTEES, in their Answer to ended Information, did not answer to the above string of dogmas trinal tests, conceiving that they were particularly addressed ı the Defendants Mr. Wellbeloved and Mr. Kenrick. In other re- their answer did not materially differ from that put in by the ustees.

y make this statement as to the former administration of the

---

say, they believe that *the funds of the Charities have, from the tion of them, been distributed by Trustees of the Presbyterian per- , and that the grants and exhibitions have been made in the same , and by the same rules, and to the same classes of ministers and aries, as they have been by the Defendants.*

Defendant JOHN WOOD, who had been made a Defendant ndment, and who joins in the general answer, says, that since his tment as one of the Trustees of the Charities he hath taken no ac- rt in the execution of the Trust; and that, in the future execution Trusts he is willing and desirous to act as the Court shall direct.

ptions having been taken to these answers, the further answers in the Appendix were put in.

cause being at issue, witnesses were examined at great length on t of the Relators.

depositions are set out in the Appendix.

ll be apparent, on a slight inspection of the depositions, that a eal of what is there contained is not, in its nature, properly legal

evidence; and therefore that, in addition to the general objection whi applies to the admission of extrinsic evidence to explain the intentic of Lady Hewley, it is open in many parts to particular technical obje tions. The whole was, however, (with the exception of that part rel ting to Mr. Moody's papers, which was abandoned,) allowed to be rea on an understanding that, as to so much of it as was not properly ac missible, the Court would treat it as the argument or speech of Cour sel. Various passages of the answers were also read by the Relator as evidence. The passages so read are marked with brackets, in th copy of the answers contained in the Appendix.

In the view which the Appellants take of this case, the evidence ac duced on the part of the Relators is, for the most part, immaterial, eve if admissible. It is chiefly addressed to prove that Lady Hewley was Presbyterian; that the preachers of Lady Hewley's time preached Tr nitarian opinions, and did not profess Unitarian opinions; and that th Dissenters of the present day, who hold Unitarian opinions, differ wide in doctrinal opinions from the Presbyterians of Lady Hewley's day.

If, as the Appellants submit, it be a sound and well-established prin ciple of construction, that where a probable meaning can be collecte from the terms of a Trust, the Court will not inquire further into th intention, and if the meaning to be collected from the terms of the pr sent Trust be to give to the Trustees for the time being a power of se lecting, according to their discretion, from *the whole class of Protesta Nonconformist preachers for the time being*, (being in other respects objects of the Charity,) without reference to the question whether the opinions do or do not agree with those of Lady Hewley, it is immateri to consider what was the particular complexion of Lady Hewley's doc trinal opinions, or what fluctuations may have taken place in the opinion of the Presbyterians, from the age of Lady Hewley to the present day and extrinsic evidence as to those facts would therefore, according the established doctrine in these cases, be inadmissible.

The language of the Deeds obviously points at a class of preache *for the time being*: it may be Dissenting preachers or it may be preache of the Established Church, or it may be both, the selection being left the Trustees. Whatever be the class intended, it will hardly be di puted, as a general proposition of law, that a charitable trust of an e during nature, expressed to be applicable to a class for the time bein will be applicable to what the law for the time being shall recognise that class. It has been already submitted that the words of the Trus when duly explained, (and which explanation is confirmed by the usage point at Dissenting preachers rather than preachers of the Establish Church, without the necessity of resorting to evidence *dehors* the Dee to collect the intention. Even if the Court should go so far, by reas [25] of the supposed ambiguity of the language of the Deeds, as admit evidence that Lady Hewley was a Protestant Dissenter, or th she belonged to a particular sect of Protestant Dissenters, with a vie to raise a presumption that she designed the Charity for the benefit Protestant Dissenters generally, or for the benefit of Dissenters of th particular sect, (—although such a course would, it is submitted, l against all precedent, since the ambiguity, if it exist at all, is *patent the deeds*,—) still evidence would not, it is submitted, be admissible the *individual doctrinal opinions* of the Foundress, with a view to sho that she designed a preference for persons holding those particular do

trinal opinions. There would not be more propriety in the admission of such evidence in the case of a Charity founded by a Dissenter than in the case of one founded by a member of the Church of England. In neither case, it is submitted, can it be admitted as a presumption of law, that a preference is intended for persons agreeing in the individual doctrinal opinions of the Founder.

If it be taken that ministers of the Church of England are excluded, either by force of the terms used in the Deeds, or by presumption of intention, from the admission of evidence, that the Foundress was a Dissenter of the Presbyterian denomination, (—in case it should be held that this is a case admitting of the introduction of extrinsic evidence in explanation of the intention,—) the objects designated will then be either Protestant Dissenting preachers for the time being, or Dissenting preachers of the Presbyterian denomination for the time being; that is to say, *the class of persons which the law shall from time to time recognise as answering to the description designated.* In ascertaining what the law will recognise, from time to time, as constituting a given class for the time being, there will be more or less difficulty according to the nature of the case. With regard to such classes as ministers for the time being of the Established Churches of England and Scotland, Protestant Dissenting ministers for the time being, and some others that might be mentioned, (Roman Catholic priests for instance,) there is no difficulty in determining the class, since they are ascertained by the statute law, or by regulations of the head of the church in question, or other acknowledged body publicly known. With regard to minor sections of religionists, such as Independents, English Presbyterians, and Baptists, there is more difficulty, since the question who is, or is not, a member of those sects, depends upon the internal regulations, from time to time, of individual congregations of each of those sects, the several congregations of each sect acting in some sort in common, but without any acknowledged head or general jurisdiction.

In the present case it is submitted that difficulty does not arise, since there is nothing in the Foundation Deeds to show that Lady Hewley designed to confine her bounty to any particular section of Dissenters for the time being, to the exclusion of others.

If it be taken that Lady Hewley intended her bounty, not exclusively for persons agreeing with her individually in doctrinal opinion, but that her Trustees should be at liberty to select from the whole class which the law tolerated and recognised as Protestant Nonconformist Preachers; then, since the objects are determined,—not by their agreeing individually in doctrinal opinion with the Foundress, but—by their belonging to the class recognised by the law as Protestant Nonconformist Preachers, it would, it is submitted, be against all principle to presume that the Foundress intended, in all future time, that the law which is to ascertain the class of objects, should be, not the law in force for the time being, but the law which was in force at the foundation of the Charity, notwithstanding that it should have been subsequently altered or modified by the legislature. Such a presumption would, it is submitted, no more be admissible in the case of a Dissenting Trust than in the case of a Trust connected with the established religion.

If Lady Hewley secretly intended that the Trustees, in their selection of objects of the Charity, should be confined to preachers agreeing in

doctrinal opinion with herself, or to preachers,—not for the time being, but—such as the law at a former period recognised as preachers, that is an intention different from the intention denoted by the words of the Trust; and evidence to show (or to raise a presumption of) such an intention would, it is submitted, be clearly inadmissible.

It is observable, that it is not pretended that there was any mistake on the part of Lady Hewley in executing the Deeds in their present form. On the contrary, it is alleged in the Information, that after resolving to found the Charity, she had frequent conferences with her friends as well as consultations with counsel, under whose advice, and [26] after long and mature deliberation, she entered into and executed the Deeds.

The Defendants did not go into any evidence. The execution of the Trusts by the general Trustees being in strict accordance with the terms of the Trust Deeds, and in accordance with the usage of the Trustees for the time being, from the Foundation of the Charity—that is to say, as to objects connected with preaching, to select from the whole class of duly constituted Nonconformist ministers for the time being such poor and pious Preachers as they, in their discretion, thought fit objects of the Charity; and, as to objects not connected with preaching, to select such poor and pious persons as they thought fit objects of the Charity—they conceived that this long usage would not be disturbed, at least without such an inquiry before the proper officer of the Court as would enable the Court, (if it should be of opinion that the intention of the Foundress was, not such as the words of the Trust import, but was to be sought elsewhere than in the Deeds), first to ascertain satisfactorily what was the intention of the Foundress, and then to give effect to that intention by providing for a due administration of the Trusts in future.

The facts, as to the religious belief of the Defendants, and their conduct in the administration of the Trusts, as alleged and made out in evidence on the part of the Relators, appear to be as follows:

As to three of the Grand Trustees, viz. Mr. John Pemberton Heywood, Mr. Peter Heywood, and Mr. Wood, and, as to one of the Trustees of the Hospital, Mr. Palmes, it is not alleged by the Information that they are Unitarians, or that they hold any opinions that disqualify them for the office of Trustees of the Charity.

As to the remaining Grand Trustees, viz. Mr. Samuel Shore the younger, Mr. Offley Shore, Mr. Walker and Mr. Gaskell, and, as to all the Trustees of the Hospital, except Mr. Palmes, the Information alleges that they are Unitarians. As to these Defendants, it was proved that they are reputed to be Unitarians; and they, by their answer, admit that they are so in the sense explained in their answers, but that they call themselves Presbyterians, and belong to congregations of that denomination.

As to the execution of the Trusts, it appears to be made out in evidence, that *out of two hundred and thirty-seven ministers* receiving assistance from the Charity, at the date of the Information, *thirty-eight* are by reputation Unitarians in doctrinal opinion. If, therefore, the Trustees were bound to exclude preachers of Unitarian opinions from any participation in the Charity, it is indisputable that they have to this extent miscarried in the execution of the Trust.

But the allegation in the Information of undue preference of Unitarians does not appear to be substantiated; and it is further observable, that of the thirty-eight ministers proved to be by reputation Unitarians, it appears, (so far as there is any evidence on the subject,) that they are the preachers of old Presbyterian chapels; and, with the exception of the doubtful case of Rossendale chapel, there is no evidence of a stipend being, for the first time, allowed to the preacher of any chapel after the congregation had become Unitarian. It does not appear that the Trustees have done more than continue the stipends theretofore given, notwithstanding that the congregation may have become Unitarian.

It further appears in evidence, that out of five exhibitions given to young men designed for the ministry, four are given to students resorting to Manchester College, York; the other being given to a student resorting to the Independent College at Rotheram in Yorkshire.

Respecting the Manchester College, it is in evidence, that although an old Presbyterian foundation, Trinitarian opinions are not taught or enforced there, and that, of the ministers educated there, the great majority are by reputation Unitarian in their opinions. If, therefore, the Trustees are by the terms of the Trust required to grant exhibitions only to students resorting to some college where Trinitarian opinions are taught and enforced, it is indisputable that in this respect, also, the Trustees have miscarried in the view taken by them of their duty.

[27] With regard to the Hospital, it is indisputable that the Trustees do not require as a qualification for admission into the Hospital, that the poor objects should be able to repeat by heart Mr. Bowles's Catechism, that work having been for a century out of print; but it is singular that this fact is not established by the evidence read at the hearing below. In fact, *it will appear upon a careful examimatiun of the evidence read at the hearing below, that there is no proof of any departure whatever from the rules left by the Foundress for the government of the Hospital.* On this branch of the case, therefore, the question nakedly presents itself, whether a party is disqualified from acting as a trustee or manager of a hospital by reason of his differing in opinion from the founder on some points of religious belief.

Although the Appellants did not enter into any evidence for the hearing below, they adduced, at the bar, historical evidence to rebut the presumption, attempted to be raised by the Relators by evidence *dehors* the Deeds, of an intention in the Foundress to confine her bounty to certain classes of Protestant Nonconformists, to the exclusion of any other class.

The argument of the Relators below was shortly this:—We are able to show by evidence that Lady Hewley entertained certain doctrinal opinions; it is reasonable to suppose that she would intend her Trustees and beneficiaries to hold the same opinions, or, at least, opinions not considerably different from those of the Foundress. It must be presumed, therefore, that the language of the Deeds, though general in its terms, was used by her in *a particular sense*, that is to say, a sense restricted or qualified with reference to her own individual doctrinal opinions.

No authority was cited (either at the bar, or by the learned judges below,) in support of any such presumption of law. It is submitted that there is no such presumption of law, and that evidence of the indi-

vidual doctrinal opinions of Lady Hewley, with a view to raise such a presumption, was inadmissible and ought not to have been received.

Extrinsic evidence, with a view to raise a *presumption of intention* to use the words in any other than their ordinary sense, was, it is submitted, no more admissible than *direct evidence of such an intention.*

There is, it is submitted, no authority for holding that the general language of a deed may receive a construction from the individual opinions of the maker of the deed.

If the Appellants were correct in their view, that such an intention as that contended for, namely, an intention to use general language in a sense qualified with reference to the individual doctrinal opinions of the Foundress, was inadmissible as a presumption of law, (however probable such an intention might be,) it was not incumbent on them to go into any evidence to rebut that presumption. Being called upon to rebut that presumption, the Appellants proceeded, as an argument *ex abundanti*, to show historically, that such an intention as that imputed to the Foundress, would, if entertained by her, be at variance with her principles as an English Presbyterian; that it was repugnant to what was known of her individual character and sentiments, and that it could not be reconciled with her conduct in relation to the present Charity, and to other charities founded by her. They submitted, therefore, that such an intention was against probability, and could not reasonably be imputed to the Foundress.

The historical argument of the Appellants was directed to the following points:

First. To show that the principles and character of the English Presbyterians of Lady Hewley's time were such as they have in a former part of this Case been described to be. (see ante, p. 7.) And they contended that it would be inconsistent with the principles of a member of that sect, to require that her beneficiaries should, through all future time, adhere to any given view or system of Christian doctrine, to the exclusion of further inquiry into the Scriptures. It was not contended that the English Presbyterians of that period looked with indifference on opposite views of Christian truth, or that they did not embrace and adhere to their own views with as much warmth and sincerity as other classes of Christians; but what was contended was, that they refused to guard their [28] own views, even on points the most cherished, and which were by themselves deemed the most fundamental, by subscription to articles or systems of Christian doctrines; a proceeding which they considered an infringement of Christian liberty. They were satisfied that their views were consistent with Christian truth, and that the truth would bear the test of inquiry; and they preferred to encounter the risk of that inquiry issuing in error, to guarding the truth by what they deemed a violation of the principle of religious liberty. In this spirit they founded their chapels, scrupulously abstaining from prescribing the system of Christian doctrines or the form of Christian worship to which the chapel was to be, from time to time, devoted by the congregation for the time being. The consequences of acting upon this principle and pursuing this course of conduct have since become known to the world. Whether, if the Presbyterians of that age could have foreseen these consequences, in all their extent, they might have been led to question the soundness of their principle, and to alter their course of conduct, can now only be matter

of conjecture. What the Appellants contended was, that the principle was such as has been stated, and that the English Presbyterians of that period advisedly acted on it.

Second. To show that the allegation in the Information, *that at the Foundation of the Charity all classes of Dissenters were agreed on questions of doctrine, and differed only on questions of Church Government,* (—whence, if true, it might be inferred that the expression "preaching Christ's Holy Gospel" had, at that time, a definite meaning with regard to doctrine, and that though designing to promote the spread of specific doctrines, it was not necessary to prescribe them—) was not true; and that on the contrary, there was a wide diversity of opinion on points of doctrine between the different sects, and especially between the sect of Presbyterians and the sect of Independents, and much controversy and animosity existing between those sects on points of doctrine.

Third. To show (which they did by numerous contemporary publications) not only that Arian and Unitarian doctrines were a subject of much controversy at that period, but that writers of great learning and reputation (among others, Locke in his Reasonableness of Christianity and his controversial writings) propounded views of Christian doctrine which, though not assuming the name of Unitarianism, were little, if at all, distinguishable from the doctrines now commonly so called; so that it was impossible that it should not have occurred to the framer of the Deeds, that preachers adopting those views might, in course of time, be in a position to participate in the Charity, if framed in terms so comprehensive as those ultimately adopted, and that if it were intended to exclude them, it would be necessary to limit the discretion of the Trustees in that respect.

It is inconceivable that a party, taking so strong an interest in religious matters, living in the midst of the agitation of doctrinal opinion going on at the date of the Foundation, and who had witnessed the change of opinion and sentiment which had taken place in the Presbyterian body, and their wide declension from the high orthodoxy of their predecessors of half a century before, should not, if she had been desirous of checking further fluctuation or declension, and of reducing doctrinal opinions to a fixed standard, have introduced into the Deeds some express provision for that purpose.

For the purpose of rebutting the presumption that Lady Hewley, by the term PREACHER, intended preachers professing any given view of Christian truth, to the exclusion of all further inquiry into the Scriptures, it would perhaps have been sufficient to show that such an intention would be at variance with the principles of the sect to which she belonged, since, if the Court admitted the doctrine of presumptions at all, it would reasonably presume, that she was actuated by the principles common to the sect of which she was a member. That Lady Hewley, however, shared the liberal and tolerant views of the English Presbyterians of the beginning of the 18th century is placed beyond doubt, by every circumstance of her conduct with reference to the present Trust.

Her selection of Bowles's Catechism (beyond question, the least orthodox or dogmatical of the catechisms in use at that period); her requiring (—which she does by her first set of Rules—) that "some pious work" should be read in the Almshouse, without pointing at doctrine or

designating any work in particular; her requiring that the Almspeople should repair, not to the Presbyterian chapel in St. Saviour's Gate, which she herself frequented—but to "some religious assembly of the Pro- [29] testant religion"; the more especially when it is remembered with what minuteness she details the duties of the Almspeople in other respects,—are all indications of the presence in Lady Hewley of the liberal and tolerant spirit which characterized the English Presbyterians of that age.

From an examination of Bowles's Catechism, (which is printed in the Appendix) the following points will, it is submitted, be clearly evident:—

1st. That it contains no other description of the Saviour, than that he was "the Son of God"; the reference to Scripture cited in the margin being 1 Timothy, iii. 16, where the words of the Common Version are, "Great is the mystery of Godliness, *God* was manifest in the flesh"; so that the Catechism seems studiously framed so as to abstain from asserting in express terms the deity of Christ.

2nd. That it nowhere affirms the distinct personality of the Holy Spirit.

3rd. That it contains no doctrine of predestination or election.

4th. That it is at least doubtful whether it contains the orthodox view of the doctrine of the atonement; the expressions used being susceptible of more meanings than one, and being such as an Arian or Unitarian might use; there being no similar ambiguity in the Shorter Catechism of the Assembly.

A slight comparison of Bowles's Catechism with the Shorter Catechism of the Assembly (which it is evident that Mr. Bowles had before him, or in his memory) affords a strong inference that he designedly avoided those expressions in it which would have made his catechism, like the Shorter Catechism, Trinitarian and Calvinistic.

It would be difficult to point out any feature in this catechism, distinguishing it from an Arian catechism. The view taken of it by Unitarians has been already stated from the answer of Mr. Wellbeloved and Mr. Kenrick. It will be remembered that they state that the only material difference between the doctrines commonly called Unitarian, and the doctrines inculcated in Mr. Bowles's Catechism, is, that the Catechism teaches that man is by birth sinful, and liable to perish everlastingly; whereas the Unitarians commonly hold, that man is from his birth, by nature, frail and liable to fall into sin, but not that he will perish everlastingly for any sin of his birth, if he have not knowingly and wilfully transgressed the commands of God.

With regard to the individual doctrinal opinions of Lady Hewley, little can be ascertained with certainty. The language of her Will, (cited in the Information) and the funeral sermon preached by Dr. Coulton on her death, seem to evince that she believed in the doctrine of the atonement. She was a member of the Presbyterian congregation of St. Saviour's Gate, York; and as the Presbyterians of that period were, generally speaking, Trinitarians, (—although many Presbyterian individuals and congregations embraced Arian opinions in the early part of the eighteenth century, and among the rest, there is reason to think, the congregation in question—) it will perhaps be insisted on as a probable inference that Lady Hewley was a Trinitarian. There was, however, no evidence in the cause (—unless the unfounded opinions of witnesses now living can be called evidence—) inconsistent with the supposition of her

n Arian. Be this as it may, there is no room to doubt that she
erson of great liberality and toleration.
selection of Bowles's Catechism by her affords a fair inference
hatever her individual opinions were, she deemed that a saving
ight co-exist with wrong or imperfect notions of Election and the
. If her own opinions on these or other points omitted in
's Catechism, were orthodox, it is the greater proof of her libe-
nd toleration, that she did not require the same extent of ortho-
her beneficiaries.
ministers of the congregation to which Lady Hewley belonged,
Dr. Coulton and Mr. Hotham already mentioned. Dr. Coulton
s one of her Trustees, and is described in the Information as the
l and spiritual adviser of Lady Hewley." Dr. Coulton is described
ontemporary as a "liberal divine," as being "no bigot to any
out a lover of all good men of what persuasion soever."—(Life
rors of John Dunton, 1706, p. 418.) Concerning his individual
al opinions there was no evidence in the cause inconsistent with
position of his being an Arian. Mr. Hotham, who was the asso-
id successor of Dr. Coulton, is the minister at the close of whose
inistry it has been mentioned that the congregation of St. Sa-
Gate made choice of an Arian as his associate and successor.
t is publicly known of Lady Hewley's general charities leads to
g but the inference that she would be likely to design her bounty,
case, to be confined to persons of her own sect or way of thinking
rinal points. It appears that by her Will, (which is in evidence)
e 500*l.* to the Corporation of York, to be distributed in coals to
r. It is historically known that she was a liberal contributor to
ools established at York by Archbishop and Mrs. Sharpe. It ap-
rom the Report of the Commissioners, for inquiry into Charities
land and Wales, vol. xii. p. 674, that Lady Hewley being entitled
xchequer Annuity of 62*l.* 10*s.* for ninety-nine years, from the 5th
h 1708, by Indentures dated 1st of February 1709, transferred
e unto Henry Cotton and four other persons, upon trust, for
g the children of the poor in any of the parishes of the Ainstie of
r elsewhere in the county of York, in reading, writing, and work-
t would hardly be contended in any of the preceding cases that
igned her bounty exclusively for persons of her own sect or way
ing in points of religious doctrine. And it will be remembered
Trustees of the present Charity, to whom the application of the
is committed, are not, by the Foundation Deeds, required to be
sect in particular, or even to be Dissenters.
he circumstances above indicated seem to lead to the irresistible
ce that Lady Hewley's bounty was not designed by her to be con-
-as in the Deeds it is not expressed to be confined,—to persons
g with her individually in doctrinal opinion, to the exclusion of
who, in the judgment of the Trustees, for the time being, should
objects of the Charity; and the Trustees, so far as anything is
on the point, seem to have acted on this view from the founda-
the Charity to the time of the Information being filed.
respect to so much of the Charity as is applicable to objects not
ted with preaching, it is observable that persons entertaining Uni-
pinions have been within the immediate scope of the Charity ever

since the foundation, and there is no evidence tending to show that Lady Hewley intended to exclude them. It is not, it is submitted, a necessary inference or presumption of law, that the founder of a charity designs his bounty exclusively for persons belonging to the same sect, or holding the same doctrinal opinions with himself. There is nothing in the Deeds requiring the Trustees to exclude from the Charity persons differing in doctrinal opinions from the Foundress, if they deem them fit objects of the Charity; and if it were proper, under these circumstances, to resort to conjecture as to the intention, (which it is submitted it is not, the language of the trust being clear), it is highly probable, from the nature of the other Charities founded by Lady Hewley, which have been adverted to, that such was not her intention.

That the circumstance of persons holding Unitarian opinions not being then tolerated, and of their being subject to legal penalties for the open profession of such opinions, would not, of itself, be a sufficient ground with Lady Hewley for excluding them from a share of her bounty, is apparent from her conduct towards the Dissenters prior to the Toleration Act, as stated in the Information.

With reference to so much of the Charity as has the promotion of preaching for its object, the following general observations are submitted.

If we suppose an individual at the commencement of the last century about to found a charity with the design of promoting the preaching of the Gospel, in conformity with the views entertained by the founder, there are two modes which would naturally suggest themselves as proper to carry such a purpose into effect.

The one is to prescribe the doctrines, to impose tests, and strictly to define the duty of the trustees in the selection of objects of the charity. This is the course which any other Dissenter than a Presbyterian of that period would probably take. This course Lady Hewley has not taken.

[31] The other mode is to select as trustees of the charity, a number of individuals holding views similar to those entertained by the founder, and to give to them an unlimited discretion, both in the selection of the preachers, and in the perpetuation of their own body. The trustees so chosen, would naturally (the founder might reasonably conclude) fill up their body from time to time with persons of views and sentiments similar to their own. The trustees being numerous, would not be liable to capricious change of opinion: the whole body would be liable to be influenced by the change of times and circumstances, just as the founder himself might have been had he lived. The founder might reasonably suppose that by confiding an unlimited discretion to his trustees, and by allowing them thus to perpetuate themselves, he would more completely carry into effect his intention, —and that a body thus constituted, accommodating themselves to the changes of times and circumstances, would, though exercising an unlimited discretion from time to time, represent and carry into effect what would be the views and purposes of the founder himself, if living, more effectually, than if he were to attempt, by anticipation and in ignorance of the new circumstances, to prescribe tests and to define strictly the line of conduct of the trustees. The latter is the course, which,

then state of religious opinion among the English Presbyterians
may be aptly described as a transition period), it is probable,
i, that an English Presbyterian would take: and this seems to
course which Lady Hewley has advisedly taken.
ay be, that in the opinion of some persons, the consequences
ot been altogether such as Lady Hewley anticipated, or would
pproved, could she have foreseen them. But that can be matter
jecture only;—the direct contrary is (the Appellants contend)
nore reasonably inferred from her position, and the state and
n of the body to which she belonged;—but if true, it could, in
r, be a ground for altering the constitution of the Trust, if (and
s no reason to question this,) it appears that Lady Hewley ad-
so constituted the Trust. She executed the Deeds at a time
reat declension from the doctrinal opinions of their fathers, was
d on many of the ministers of the denomination to which she
ed; when an indifference to the doctrinal parts of Christianity,
pared with the practical, was beginning to manifest itself; and
in fact, the Arian and Socinian controversies were carrying on
her. It is a fair presumption, that in these Deeds, executed
much care, she would have introduced clauses protective of
inions which she held, if she had meant a regard to those opi-
in all time to come, to prevail over a regard to freedom of in-
nto Scripture, the open profession of the result of that inquiry,
at comprehensive benevolence in which the whole foundation
s to have been conceived.
s cannot reasonably be disputed, Lady Hewley did not intend
ine the Charity to preachers then, and in all time to come, agree-
all respects with her in doctrinal opinion, then, since she has
l some latitude to her Trustees on the question of doctrine, and
t defined what description of Dissenting preachers she did mean
expression "preachers, for the time being, of Christ's Holy
," there seems no other safe rule, than to allow it to embrace
ss which the law, for the time being, recognises as Dissenting
ers of the Gospel. To consider as preachers of the Gospel those
ccording to the language of the 19th Geo. III. c. 44.) believe
*the Scriptures contain the revealed will of God, and receive the
as the rule of their doctrine and practice,*" is a simple and safe
construction: and it cannot but be attended with great mischief
convenience to substitute for this simple and safe rule, the rule
ose only are preachers of the Gospel who preach what an Equity
for the time being, may himself deem sound doctrine, or may
ture that the Foundress would have deemed sound doctrine.
ether a proposed object of the Charity belong to the class recog-
by the law, for the time being, as Dissenting preachers of the
l; whether he makes the Gospel of Christ the foundation of his
ing; whether he be of a godly life, and in other respects a fit
of the Charity, the Trustees may reasonably be supposed ca-
of judging. But whether he be a preacher of the Gospel, ac-
g to the views of the Foundress, not defined, or according to a
view of the truth contained in the Gospel, the Trustees are
stly incapable of judging.

[32] The cause was heard before His Honour the Vice-Chancellor on the 17th, 18th, 19th, and 23rd days of December, 1833.

The Decree pronounced by His Honour is set out in the Appendix. The Decree was in substance as follows:—

To declare that ministers or preachers of what are commonly called Unitarian belief and doctrine, and their widows, and members of their congregations, and that persons of what are commonly called Unitarian belief and doctrine, are not fit objects of, and are not entitled to partake of, the Charity. To remove all the Defendants from being Trustees, and Sub-Trustees, or Managers, respectively of the Charity, and to refer it to the Master of the Court, in rotation, to appoint proper persons to be Trustees, and Sub-Trustees, or Managers thereof, respectively in the room of the Defendants. To refer it to the Master to take an account of the rents and profits of the Charity Estates since the 25th day of March, 1830, and in taking the accounts, the Master not to disturb or disallow the distribution made of the rents and profits by the Defendants, in or about the month of May 1830. To refer it to the Master to tax all parties, their costs of the suit up to that time, as between solicitor and client. To refer it to the Master to settle a scheme for the application of the accumulated fund, after providing for the payment of the costs of the suit.

At the close of His Honour's judgment, the Counsel for the Relators made an offer to allow Mr. John Pemberton Heywood to continue a Trustee. The Counsel for the Trustees not being able to recognise any authority on the part of the Relators to continue Mr. Heywood as a Trustee, if a case had been established for his removal, declined to enter into any arrangement with them; and the following words were introduced into the Decree with reference to this offer: "The Relators "by their Counsel having made an offer to allow the Defendant John "Pemberton Heywood to remain a Trustee of the said Charity, and "the said Defendant, by his Counsel, not having accepted such offer, "the Court did order, and it was decreed that the said Defendant John "Pemberton Heywood, and also all the other Defendants, be removed "from being Trustees and Sub-Trustees or Managers respectively of "the said Charities."

The effect of the Decree, it will be observed, is to declare that persons holding Unitarian opinions are not fit objects of the Charity, (—and that without making any distinction between preachers and those objects who have no connexion with preaching,—) and to remove the present Trustees.

In so far as the Charity extends to objects not connected with preaching, the Decree appears to the Appellants erroneous in every conceivable view of it. Persons holding Unitarian opinions have been within the scope of the Charity ever since the foundation. In so far as it extends to objects connected with preaching, it appears to them, even in the view of the Foundress's intention taken by the Court below *defective*, and therefore erroneous, inasmuch as it contains no sufficient provision for giving effect to that intention.

The Court, proceeding on the assumption that the Foundress intended her Charity for certain classes of preachers, not specified in the

Trust Deeds, to the exclusion of other classes, does no more than exclude a single class, *without declaring what classes are entitled to participate*, which seems necessary to be done for the guidance of the future Trustees; and although it removes the present Trustees on the ground (as it would seem, though this is left to conjecture,) of their doctrinal opinions, it contains no direction concerning the doctrinal opinions of the future Trustees, or the sect of Dissenters from which they are to be selected. The Decree in short leaves the Charity without any direction as to what class of persons are proper to be Trustees in future, or how the funds are to be administered, except that persons of Unitarian opinions are in no way to participate.

One inconvenience of the position in which matters are left by the Decree, has already manifested itself in the Master's office, where a speculative contest of great length, and attended with great expense, [33] is being carried on by three classes of Dissenters claiming to be entitled to fill the office of Trustees of the Charity.

By the terms "poor and godly preachers for the time being of Christ's Holy Gospel," it is submitted, Lady Hewley must have meant either:—

1st. Nonconformist preachers, generally, for the time being; which is the view taken by the Appellants, for the reasons which have been stated; or—

2nd. Nonconformist preachers,—not for the time being, but—such as were recognised by the Law as it stood at the foundation of the Charity, viz. preachers subscribing and declaring their approbation of all the doctrinal articles of the Church of England; or—

3rd. Preachers of her own sect or denomination of Dissenters; or—

4th. Preachers concurring with herself individually in doctrinal opinion.

If she meant the first, the Decree is, it is submitted, erroneous, inasmuch as Unitarian ministers are Nonconformist preachers for the time being, and are therefore not excluded.

If she did not mean the first, it seems necessary, in order to a due execution of the Trust, that the Trustees should know which of the other classes she meant, since they are not specified in the Trust Deeds. A declaration of the intention is therefore necessary. The Decree provides for a single case only of departure from the intention of the Foundress; whereas, if the intention be that suggested in any of the above last three alternatives, it appears from the proceedings in the cause, that there has been a general and long continued departure from the intention, calling for the correction of the Court.

In these circumstances, to confine the correction to a single point, might lead to the inference that in all other points a departure from the doctrinal opinions meant to be required by the Foundress is immaterial.

If, instead of collecting the intent from what is declared in terms in the Deeds, the Court is to conjecture what class of preachers it is *most probable* that Lady Hewley *intended to designate*, the English Presbyterians (as being the sect to which she herself belonged) would seem to present the strongest claim: and upon that principle the Charity

ought to be confined to them, and there should be a declaration therefore in the Decree to the effect suggested in the third alternative. In this view the Trustees have hitherto miscarried in admitting Baptists and Independents to a share of the bounty; and the correction of the Court is distinctly called for in that respect.

The Vice-Chancellor appears (from his published judgment, which will presently be adverted to) to have selected the doctrines of "the Divinity of the Saviour's person," and of "Original sin as it is generally understood," as the measure or test of admission to or exclusion from the benefit of the Charity; but in any view of the Case, the Court has at present, it is submitted, no means of knowing that those doctrines constitute a perfect measure or test; and in the 2nd and 3rd of the alternatives above suggested, it is clear that they are an imperfect measure.

In the event of the Court declaring the intention according to the terms of the fourth alternative suggested, an inquiry what were the individual opinions of Lady Hewley seems indispensable, with a view to the due execution of the Trust; and such an inquiry is in accordance with the practice of the Court usual in the like cases. The Relators may, for anything the Court yet knows, have brought forward just so much evidence of Lady Hewley's doctrinal opinions as would serve to exclude the sect to which Mr. Wellbeloved belongs, without excluding any others. Whereas, if the whole truth were known, it might appear that, upon the principle on which the Vice-Chancellor professes to proceed, there is as great, or greater, reason for excluding the Independents, the sect to which the Relators belong; it being admitted that the Foundress was herself a Presbyterian.

In the event of the intention being declared according to the terms of the 2nd or 3rd alternative, an inquiry seems necessary, whether there is now any class or denomination of Dissenters corresponding to those [34] contemplated. That there is no class or sect in all respects answering to those contemplated, there is, from the evidence in the Cause, good reason to believe; and if the result of the inquiry be to establish this fact, the Court would have to determine whether the Trust ought to be executed *cy près*, so far as it has preachers for its object, or whether there being a failure of preachers within the intent, the whole funds must not be applied by the Trustees, as the general residue is directed to be applied, viz. amongst "poor and godly persons being fit objects of Lady Hewley's and the Trustees' Charity."

If the view of the Case taken by the Appellants be correct, viz. that the intention was, (what the words seems to import,) to embrace all Non conformist preachers for the time being, the points suggested as arising out of the last three alternatives do not of course arise.

It appears from the Vice-Chancellor's judgment, (which has been printed and published by authority,) that the ground on which he felt himself called upon to exclude Unitarians from participation in the Charitable Funds, and from the execution of the Trust, was a supposed diversity of opinion between them and the Foundress concerning the Doctrines of "the Divinity of our Saviour's person," and "Original Sin as it is generally understood."

With regard to the first point, viz. the Divinity of the person of Jesus Christ, it has been already stated, that there is no evidence in the Cause

what were the individual opinions of Lady Hewley concerning that doctrine, save in so far as an inference may be drawn from the opinions of the congregation to which she belonged, which at no long interval after her death proved to be Arian, and from the fact of her selecting a catechism from which, as has been seen, a distinct declaration of that doctrine seems studiously excluded.

With regard to the second point, viz. the doctrine of Original Sin, it is observable that, in Lady Hewley's time at least, the rejection of this doctrine was by no means a distinguishing mark of a Unitarian. Firmin, for example, perhaps the most celebrated Unitarian of Lady Hewley's time, was a believer in this doctrine, whilst it was rejected by Bishop Jeremy Taylor, and some other distinguished members of the Church of England. An approval of this doctrine therefore, by Lady Hewley, would not necessarily point at the exclusion of Unitarians. It is remarkable also, that the now Unitarian view of this doctrine seems, not distinctly, to be approved of by the late Bishop Tomline, who after observing that a uniformity of opinion upon this point is hardly to be expected amongst divines, states the difference to be not very material "between those who confine original guilt to a mere liability to death and sin, and those who extend it to a liability to punishment also."—*Christian Theology*, vol. ii. p. 241. There would seem almost as much propriety in excluding Bishop Jeremy Taylor, Bishop Tomline, and others, who have shared their imperfect views of the doctrine of Original Sin, from all participation in a Trust founded by a Member of the Church of England, as in excluding the present Defendants, *on that ground alone*, from participating in the present Trust.

It has been mentioned that some of the stipends objected to, (and which it is the effect of the Decree to discontinue,) were paid to the Ministers of Presbyterian chapels or congregations, whose ministers were in the receipt of stipends in Lady Hewley's lifetime,—(and the St. Saviour's Gate Chapel, York, is one instance of this,)—and which therefore the Trustees were, under the Clause in the Foundation Deed, already particularly adverted to, required by the Foundress to continue until they should see just cause to discontinue them. To hold that these ministers are not qualified to receive these stipends, on the ground of some departure in the congregations in question from the doctrinal opinions of the same congregations at a preceding period, would be tantamount to holding that the ministers or congregations in question are not the duly constituted ministers or congregations of those chapels; and the effect of such a decision may be to shake the title of nearly the whole of the Presbyterian congregations in England to the chapels and endowments now held by them.

It is submitted, that the existing congregations and ministers of the chapels in question are the duly constituted congregations and ministers of those chapels, notwithstanding that they may differ on some points of [35] doctrine from the congregations assembling at the chapels at the date of the Foundation Deeds.

The congregations in question are voluntary associations for Christian worship; and the government of the chapel, in each case, as to doctrine, discipline and the mode of conducting the worship, (—for in this latter particular there is considerable diversity, some of the Presbyterian congregations, for instance, making use of a Liturgy, and others not,—) is

regulated, from time to time, by the congregation for the time being assembling at the chapel.

These chapels were not founded as Trinitarian chapels, or for the preaching or promoting of any definite system of doctrines. They are in the great majority of instances founded, as in the case of the Wolverhampton Presbyterian chapel, (sometime since argued before the Lord Chancellor*, but in which his Lordship has intimated his intention not to give judgment until the present appeal shall have been heard,) "for the Worship and Service of Almighty God," or in language of equivalent general import.

It is submitted, that in the case of all these chapels, where there is no provision in the foundation deeds as to the doctrines to be preached, it must be taken to have been the intention of the founders, or congregation originally assembling at the chapel, that its government, from time to time, as to doctrine, discipline, and mode of worship, should be vested in the congregation, for the time being, lawfully assembling there. Such an intention is consistent with the principles of the founders, and with the grounds and motives of their dissent from establishments; and the usage in the chapels in question establishes that such was the intention.

It is not stated in the Decree, upon what grounds the Defendants have been removed from being Trustees; but it may be collected (and the Vice-Chancellor's printed judgment confirms this view) that it was on the ground of the doctrinal opinions held by them; the holding of which the Court seems to have considered incompatible with a due discharge of their duty. It does not appear to have been the Vice-Chancellor's impression that the evidence (already adverted to, p. 26) established a case against the Defendants of undue preference of Unitarians; and it will be remembered, that the Charity Commissioners, whose opportunities of forming a correct judgment on this point were much more ample than those presented to the Court, do not impute any such preference.

It appears from the Decree, that the Court did not impute to the Defendants any moral or culpable misconduct in the execution of the Trust, or anything more than mistake in the view of their duty as Trustees. The Court, by its Decree, has not only allowed the distribution of the funds made by the Defendants down to the filing of the Information, and given to the Trustees their full costs, (which it would not have done, if they had committed any culpable breach of duty,) but was willing, with the concurrence of the Relators, to allow the Defendant Mr. John Pemberton Heywood (one of the Trustees who had been longest in office) to remain a Trustee.

There is no other ground of removal, therefore, than that of the doctrinal opinions imputed to the Trustees. Now it has been shown, that as to three of the Grand Trustees, viz. the two Mr. Heywoods and Mr. Wood, it is not by the Information alleged that they are Unitarians, or that they hold or profess any opinions incompatible with a due discharge of their duty as Trustees. There seems, therefore, no ground substantiated for their removal, even in the view that the Court below has taken

* The Attorney-General *v.* Pearson, argued in Hilary Term, 1836. A report of the argument, from the short-hand writer's notes, has been published.

of the construction of the Deeds; and the proceeding of the Court below in ordering their removal is, therefore, it is submitted, in every view of the Case, erroneous.

It is difficult to conceive on what principle the Court proceeded in the case of Mr. John Pemberton Heywood. If he were unfit for the office of a Trustee, the Court could not with propriety allow him to remain at the instance of the Relators. If he were not unfit, why was he removed?

[36] The due appointment of the Defendants as Trustees is not called in question by the Information.

With regard to the Trustees of the Hospital, it has been stated that there was no evidence in the Cause of any departure from the rules of the Foundress, and the question nakedly arose, whether their doctrinal opinions was a sufficient ground of removal.

Even if it had been established that there had been a departure from the regulations of the Foundress, with regard to the management of the Hospital, a Decree of the Court—not declaring that the regulations are in future to be observed, but—at once dispossessing the present Trustees and Governors of the Charity, on the ground of their failing to enforce all the ancient regulations, might, it is apprehended, be a precedent of dangerous example in the case of some of the public schools and colleges of the realm, of ancient foundation.

There is, it is believed, no precedent for the removal of the trustees of a general charity, on the ground of their doctrinal opinions; and such a step seems not called for in this Case, by any principle of convenience. When the classes of preachers, whether Nonconformist preachers or preachers of the Establishment, are ascertained, there can be no more difficulty in the execution of the Trust by the present Trustees, than by Trustees chosen from any other class or classes of Dissenters. It is not as if it were the case of an individual chapel, where there would be any obvious convenience in having the Trustees chosen from members of the congregation.

In these circumstances the Defendants were advised to appeal from the Decree of the Vice-Chancellor to the Lord Chancellor.

The following fact is stated as an additional ground of appealing from the Decree of the Vice-Chancellor to the Lord Chancellor, and as bearing upon the question of the costs of that Appeal, hereinafter adverted to.

A book entitled "An Improved Version of the New Testament," and mentioned in a catalogue of books appended to the Sixth Report of a Society called "The British and Foreign Unitarian Association," was tendered by the Relators in evidence against the Defendants, but on its being objected to, it was withdrawn. It will be observed, on reference to the Decree in the Appendix, where all the evidence is particularized, that this book is not enumerated among the evidence adduced on the part of the Relators. The Judgment of the Vice-Chancellor against the Defendants was mainly founded upon a criticism of this book.

The present Appellants, in conjunction with Mr. John Pemberton Heywood, accordingly appealed from the Decree of the Vice-Chancellor to the Lord Chancellor.

The Cause came on to be heard before the Lord Chancellor Brougham, assisted by Mr. Justice Littledale and Mr. Baron Parke, on the 26th, 27th, 28th, and 29th days of June, 1834, when the further hearing thereof was adjourned; and a change in the custody of the Great Seal

taking place, and the Relators having refused to accede to an arrangement suggested by the Lord Chancellor, and assented to by the Defendants, by which the judgment of the Lord Chancellor might have been delivered after he should have quitted office, no further hearing took place before the then Lord Chancellor.

The Cause again came on to be heard before the Lord Chancellor Lyndhurst, assisted by Mr. Baron Alderson and Mr. Justice Patteson, on the 17th and 18th of February, 1835, when the further hearing thereof was adjourned.

The Solicitors for the Relators and for the Defendants on the 10th day of April, 1835, signed their written consent, "That if the Right Honourable Lord Lyndhurst, the then Lord High Chancellor, would hear the Appeal, either with or without the assistance of any of His Majesty's Judges, the respective parties would give to His Lordship's judgment, if delivered after he should have quitted office, the same [37] effect and no further, as it would have had in the event of its being delivered by him, while in possession of the Great Seal."

The Cause came on to be further heard on the 11th, 13th, and 14th of April, 1835.

On the 5th of February, 1836, His Lordship was pleased to affirm the Decree of the Vice-Chancellor without costs.

It appears that the above arrangement was entered into by the Relators without obtaining the consent of His Majesty's Attorney-General for that purpose. Before judgment was delivered, the Defendants submitted to the Court, that as the consent to take the judgment of an individual no longer holding the office of Lord Chancellor, was a proceeding out of the ordinary course, and was not therefore sanctioned by the original authority given by His Majesty's Attorney-General to the Relators to conduct the Suit, it would be proper, before judgment was delivered, that the express consent of the Attorney-General should be produced to the Court.

The Decree was pronounced without the consent of the Attorney-General having been obtained.

The order so affirming the Vice-Chancellor's Decree is set out in the Appendix.

Upon the question of costs, it is submitted, that in a case of so much novelty and difficulty, and having regard especially to the grounds upon which the Vice-Chancellor's judgment was founded, the Defendants, being Trustees merely, and having to protect the interests of a numerous body of persons claiming a title to participate (as they had long done) in the Charity funds, were not only justified, but bound, in the due discharge of their duty, to bring the matter for review before a superior tribunal, and that it is contrary to the practice of the Court in such cases to require Trustees to bear their own costs.

The Defendants have not been allowed the costs incurred by them in taking the opinion of the Court on the question, whether they were bound to answer on oath as to their individual doctrinal opinions; on this point also they conceive that they have just cause of complaint.

After the affirmal of the Decree of the Vice-Chancellor, but before the presentation of the present petition of Appeal, Mr. John Pemberton Heywood died. Since the presentation of the present petition of Appeal, the Appellants Samuel Shore the younger and Varley Bealby have died.

The Appellants are advised and submit, that the Decree below is erroneous, for, amongst others, the following

REASONS.

1. Because there is nothing in the Trust Deeds denoting an intention to exclude preachers or other persons of Unitarian opinions (being in other respects fit objects of the Charity), from participating in the funds of the Charity; and extrinsic evidence to show such an intention (or to raise a presumption of such an intention) is inadmissible.
2. Because the expression "poor and godly preachers for the time being of Christ's Holy Gospel," denotes, according to the meaning of those terms, at the date of the Foundation Deeds, (and which meaning is confirmed by the usage,) Protestant Nonconformist preachers for the time being, who should make Christ's Holy Gospel the foundation of their faith; and Unitarian preachers are such preachers.

38] 3. Because the intention which the words of the Trust import, according to the construction suggested in the last preceding Reason, is a probable and lawful intention; and it is a sound rule of construction, that if a probable and lawful intention can be collected from the words of a trust, the Court will not look further for the intention; and extrinsic evidence to explain the intention (or to raise a presumption of intention) ought not in this Case to have been admitted.

4. Because, if the intention be doubtful, a usage which has prevailed ever since the foundation of the Charity, and which is consistent with the intention, so far as that intention is expressed in the Deeds, ought not now to be disturbed. The usage stated in the answers of the Defendants is not contradicted by the evidence. If there be any doubt as to what the usage has been, it ought, it is submitted, to be ascertained by an inquiry before the proper officer of the Court.
5. Because it is not a presumption of law, that a Charity, founded by a Dissenter, whether for the promotion of preaching or of a more general nature, is intended by the founder (where not so expressed) exclusively for the benefit of Dissenters of the same sect with the founder, or who should agree with him, individually, in doctrinal opinion; and extrinsic evidence of the doctrinal opinions of the Foundress, with a view to raise such a presumption or to give a particular construction to the general language of the Trust, was inadmissible. Not only is there nothing in the language of the Foundation Deeds, in the present Case, to denote such an intention, but the contrary intention is rather to be inferred, from the circumstance that the Trustees are not required to be selected from any given sect or denomination.
6. Because from the tenor of the Trust, it does not appear to have been the intention of the Foundress to impose any doctrinal test, or to require the profession of any given system of Chris-

tian doctrines by the preachers as a qualification for being admitted to participate in the Charity: and that such an intention would have been inconsistent with the principles of the religious sect to which the Foundress belonged, and cannot therefore be imputed to her as a probable intention.

7. Because the intention of the Foundress was, to confide to the Trustees for the time being, appointed in the manner provided by the Foundation Deeds, a discretionary power of selecting objects of the Charity within the limits prescribed by the Deeds; and for the Court to prescribe other limits to the Trustees, or to appoint other Trustees, would be to defeat the intention.

8. Because, if it were the intention of the Foundress that the Charity should be confined to Dissenters of the same sect as the Foundress (which was admitted to be Presbyterian), or who should agree with her individually in doctrinal opinion, the Decree does not contain any sufficient provision for giving effect to that intention, or for ensuring the due administration of the Charity in future.

As applicable to so much of the Decree as directs the removal of the Trustees, the following additional Reasons are submitted:

1. Because error in judgment is not a sufficient ground for removal, and no case of misconduct is established against them.

2. Because the Trustees are not, by the Deeds, required to belong to any given sect or denomination of Christians; and the holding of Unitarian opinions is not a ground of disqualification or removal.

[39] So far as relates to the case of Mr. John Pemberton Heywood, Mr. Peter Heywood, and Mr. Wood, the following additional Reason is submitted:

Because it is not alleged in the Information that they are Unitarians, or that they are, in any other respect, disqualified to fill the office of Trustees of the Charity; nor was there any evidence in the Cause of any such disqualification, even if such evidence had been admissible.

As applicable to the removal of the Trustees of the Hospital, the following additional Reason is submitted:

Because there is no evidence in the Cause, that the rules left by the Foundress for the government of the Hospital have been in any respect infringed by the Trustees.

So far as relates to Mr. Palmes—

1. Because it is not alleged in the Information that he is by his doctrinal opinions, or in any other respect, disqualified to fill the office of a Trustee of the Hospital, and evidence could not properly be received to show any such disqualification.

2. Because if such evidence were admissible, a member of the Church of England is not disqualified to fill the office of a Trustee of the Hospital.

R. M. ROLFE.
JAMES BOOTH.

THE RESPONDENT'S CASE.

---

[1]* In the House of Lords.

Between Samuel Shore the younger (since deceased), Offley Shore, Peter Heywood, Thomas Walker, Daniel Gaskell, John Wood, the Rev. Charles Wellbeloved, the Rev. John Kenrick, Thomas Bischoff, Varley Bealby (since deceased), Joseph Henry Oates, and George Palmes, APPELLANTS,

AND

His Majesty's Attorney-General, at the relation of *Thomas Wilson, Joseph Read, George Hadfield, John Clapham, and Joseph Hodgson,* RESPONDENT.

The Case of His Majesty's ATTORNEY-GENERAL *upon the Appeal against the Decree of His Honour the* VICE-CHANCELLOR *of the 23d day of December* 1833, *and the Order of the* LORD HIGH CHANCELLOR *of Great Britain of the 5th day of February* 1836, *affirming the said Decree.*

DAME SARAH HEWLEY, the foundress of the Charities, the due administration of which forms the subject of this Appeal, was born in the year 1627, and died on the 23d day of August 1710. Lady Hewley was remarkable for her piety and great charity, and was at the time of her death a person of much distinction amongst the Dissenters from the Established Church of England in York and Yorkshire and the other northern counties of England, who then called themselves and were commonly called "godly persons," or "the godly," and were all of them in their religious belief Trinitarians.

During the times of the religious persecutions of the English Presbyterians and Independents, and other persons calling themselves godly Dissenters from the Established Church, in the reign of Charles the Second, Lady Hewley stood forward as the protector and as the supporter of the ejected ministers of St. Bartholomew's day 1662, under the Act of Uniformity of the 13th and 14th Charles the Second, and of the persons calling themselves godly who were Nonconformists. And accordingly honourable mention is made of Lady Hewley in the memoirs and biographies of those times, for her piety and great charity, as being the friend and supporter of the ejected ministers and of the godly in distress; and, in particular, in the memoirs of Oliver Heywood, an eminent Nonconformist of those times, and in the Autobiography of Dr. Calamy, and in the Life and Errors of John Dunton.

Lady Hewley was the wife of Sir John Hewley, a native of the city

* The figures in brackets show the paging in the Case, *as originally printed*, and are inserted here on account of the references which were from time to time made by Counsel, to the *Appellants' Case* and the *Respondent's Case*.

of York, and the representative in Parliament of his said native city during the twenty-ninth, thirtieth, and thirty-first years of Charles the Second.

Sir John Hewley was a believer in the doctrine of the Atonement, as appears by his will, which was published by him on the 24th June 1682, and which commences with these words: "I commend my spirit to "God that gave it, hoping to find mercy to me, a sinner, and to be "saved by the only merits and mediation of Jesus Christ, my alone [2] "Saviour and Redeemer." This will was published in the presence of, and attested by the Reverend Timothy Hodgson, who was afterwards Lady Hewley's private chaplain, and by Ralph Ward, Sir John Hewley's chaplain, who was the father-in-law of Dr. Coulton, the first minister of the Saint Saviour-gate Meeting-house in York.

The Saint Saviour-gate Meeting-house or Chapel was partly endowed by Lady Hewley, and was a Trinitarian meeting-house for the worship of God under the protection of the Act of Toleration, as appears by the registry in the Sessions-book at York, which is in the following words: "City of York General Quarter Sessions, held 8th "April 1693. Ordered, That a house built in Saint Saviour-gate in "the city of York be allowed a meeting-place for their Majesties' dis-"senting subjects, according to the Act of Parliament made in the first "year of the reign of their Majesties, entitled, 'an Act for exempting "'their Majesties' Protestant Dissenting Subjects from the Church of "'England from the penalties of certain laws.'" Lady Hewley was constant in her attendance on divine worship, under the ministry of Dr. Coulton, in the Saint Saviour-gate Chapel, and the pew which she occupied is still known by the name of "Lady Hewley's pew."

Sir John Hewley died in the year 1697 without issue, leaving Lady Hewley his widow, who became possessed of very considerable landed property, and devoted the remainer of her life to acts of piety and charity.

Lady Hewley had in her life-time founded an Almshouse or Hospital at York for the support of ten almswomen.

Some years before her death, Lady Hewley became desirous of devoting the principal part of her property for the purpose of encouraging the preaching of Christ's holy gospel by Dissenting preachers from the Established Church, by her and others in those times called Godly Preachers, and for the maintenance and support of such godly preachers and their widows, and for the education of godly preachers of the Gospel, and for the relief of godly persons in distress, and for the maintenance and support of her hospital or almshouse; and being so minded and disposed she executed two sets of endowment deeds.

The first set of these consisted of indentures of lease and release and assignment, and declaration of trust; the release and assignment, and deed of declaration of trust, both bearing date the 13th January 1704, and purporting to be made between Dame Sarah Hewley of the one part, and the following seven Trustees: Richard Stretton, Nathaniel Gould, Thomas Marriot, John Bridges, Thomas Nisbett, James Wyndlow, and Thomas Coulton, (being the Dr. Coulton before mentioned,) of the other part.

By these endowment deeds, Lady Hewley duly conveyed and assigned to the said seven Trustees the manors of Kelling-hall, and Brey

and Haya Park, and certain other lands in the County of York, :rust (after her death), That the said Trustees should, from time e during the continuance of the said trust estates, respectively, ' the clear and residuary rents, issues, and profits of the trust ;es, as well pay and dispose of such sums of money, yearly or vise, to such and so many poor and godly preachers, for the time of Christ's holy gospel, and to such poor and godly widows, for me being, of poor and godly preachers, for the time being, of :'s holy gospel, at such time and times, and for so long time or , and according to such distributions, as the said Trustees and gers for the time being, or any four or more of them, should think d employ and dispose of such sums of money, and in such manner, e encouraging and promoting of the preaching of Christ's holy l, in such poor places as the said Trustees and Managers, for the ›eing, or any four or more of them, should think fit: as also em- ınd dispose of such sums of money, yearly or otherwise, as and for ıtions, for such or so long time or times, for or towards educating such young men designed for the ministry of Christ's holy gospel, exceeding five such young men at one and the same time, as the 'rustees and Managers for the time being, or any four or more of should approve and think fit. And as to the surplus and re- ler of the said clear and residuary rents, issues, and profits, that ıid Trustees should, from time to time, employ and dispose of the in and for the relieving such godly persons in distress, being fit ts of Lady Hewley's and the Trustees' and Managers' charity, as the Trustees and Managers for the time being, or any four or more of , should think fit. Nevertheless it was by the said deed provided leclared, that the said Trustees and Managers for the time being d, in their dispositions and distributions of the aforesaid charity, a primary respect to such objects thereof, as aforesaid, as were or should afterwards be in York, Yorkshire, or other northern ıies in England, not excluding those in other places and counties, e said Trustees and Managers for the time being, or any four or of them, from time to time, should think fit; and also, that what- r charitable dispositions or allowances by Lady Hewley should been made to persons or places in York or Yorkshire, immediately ortly before her death, should be continued and paid out of the clear and residuary rents, issues, and profits of the premises, by ıid Trustees and Managers for the time being, until they, or four :m at the least, should see just reason to discontinue, alter, or de- ne the same, or any of them, respectively.

e deed of declaration of trusts contains the following proviso for ıppointment of new Trustees. It is thereby declared, that from to time, and as and when one of the Trustees for the time being d die, the survivors of him should elect, in the room of every such ıing Trustee, such a person as they in their judgment and con- ce should think fit to approve, who should be a Manager of the trust estates, together and equally with the then surviving Trustees, have equally with them the same authority, power, and benefit, :ting the trusts by the said indenture declared; and in case of the ı of any such elected Manager, to elect in the like manner, in his , another like Manager; and that the election of every such

Manager, for the time being, should be entered and registered in some or one of the books to be so provided and kept, as in the said deed mentioned; and that after such time as two or three, at the most, of the said Trustees should have departed this life, the survivors of them should add to themselves, as Co-trustees with them, all and every the Manager and Managers so elected as aforesaid, to make up the number of Trustees to be completely seven in the whole; and the surviving Trustees were thereupon, by the advice of Counsel, to convey all their said estates to the said persons who for the time being should be such elected Managers, and unto the surviving Trustees, thereby to complete the number of seven Trustees. And the said deed reserved a power to Lady Hewley, by any deed or writing attested by three or more witnesses, or by her last will so attested, to revoke or alter all or any of the uses, estates, and trusts, thereby limited or declared of or concerning the said premises, or any part thereof, and thereby, or by other deed or writing, to limit or declare new or other uses or trusts thereof.

The second set of endowment deeds was executed in the year 1707, for the purpose of providing, in the first place, for the support and maintenance of Lady Hewley's hospital or almshouse, and afterwards for the charitable purposes of the trust-deed of January 1704. These endowment deeds were also indentures of lease, release, and assignment, and declaration of trust; the deeds of release and assignment, and of declaration of trust, both bearing date 26th April 1707; and purporting to be made between Lady Hewley of the one part, and the same seven Trustees of the other part, as the first set of endowment deeds.

By these endowment deeds Lady Hewley duly conveyed and assigned to the said Trustees the hospital or almshouse, and certain lands in the manor or lordship of Eston in the county of York, upon trust (after her death) to permit the said almshouse or hospital to be for ever used and [4] enjoyed as and for an hospital or habitation for poor people, in such manner as the same then was, or at the time of the death of Lady Hewley should be used or enjoyed, but subject to such orders, regulations, powers, provisoes, and appointments, as in the said deed mentioned concerning the same; and upon trust (after the death of Lady Hewley) that the said Trustees and the survivors of them, their heirs, assigns, and successors in the said trusts, and the Managers for the time being, should, out of the rents, issues, and profits of the residue of the said premises, pay and discharge all costs, charges, and expenses, which the said Trustees for the time being and Managers should be put to, or reasonably allow or expend, in or about the reparation of the said premises, or getting in or recovering the rents and profits thereof, or in providing Catechisms for the poor for the time being of the said hospital or almshouse, or in defence, execution, or management of their trusts or trust estates; and subject thereto, upon trust, that the said Trustees for the time being and Managers (after the death of Lady Hewley) should, by and out of the rents and profits of the said residue of the premises, raise yearly for ever the clear sum of 60*l.*, to and for the only benefit, maintenance, and support of such poor people as Lady Hewley, during her life, had or should place, or which the Trustees or Managers for the time being, or any four or more of them, should from time to

lace in the said hospital or almshouse, in such proportion, at such and to such uses and purposes, as Lady Hewley had, or at any luring her life should appoint, in writing under her hand, or in ook or books, collection of rules, orders, directions, or articles, then were, or thereafter should be made, collected, or appointed ady Hewley, or by the order signed by her proper hand, for the ordering, choosing, and government of the said poor in the said ouse; and more particularly, that such Trustees and Managers e time being, or any four or more of them, should from time to after the death of Lady Hewley) fill up and place to the number poor persons, qualified according to such collection of rules and , in such hospital or almshouse, whereof nine were to be always widows or unmarried women, so long as they should continue being of the age each of them of fifty years or upwards, and the person to be a sober, discreet, and pious poor man, who might be pray daily twice a day (*viz.* every morning and evening) with the f the poor in the almshouse, if such man might conveniently be , and in default thereof, the tenth to be a poor woman, qualified e other nine; and also that the said Trustees and Managers for me being should pay to each of the said ten poor persons ten gs, upon the first day of every Almanack month in every year. pon further trust, that from time to time, when and as any one of rustees for the time being should happen to die, the said Lady y during her life, and after her death and in default of her ating and electing, the survivors of them, the said Trustees, l elect in the room of every such deceasing Trustee, such person ntation as they, in their judgment and conscience, should think fit pprove, to be a Manager of the said trust estates together and y with them, and who should have equally with them the same rity and power, touching the trust by the said deed of trust de- . And upon further trust, that they, the said Trustees and gers for the time being, should, at all times after the death of Hewley, observe and keep the rules, orders, and directions and , in the deed of trust, and in the said collection, system, or book es, orders, and directions, subscribed with the proper hand of Hewley, contained, as carefully and exactly as possible might be; hat the said Trustees and Managers for the time being should, he death of Lady Hewley, be from thenceforth, for ever, the only Visiters and Governors of the said almshouse or hospital, and of poor persons therein, and that they, or any four or more of them, have and use the sole power, from time to time, to govern, order, into, or expel or put forth of the said almshouse, all such poor s as then were, or thereafter should be admitted into the same, rsuant always to the said rules, orders, directions, articles, or in the said book or collection subscribed as aforesaid, contained, the better government of the same after the death of Lady Hewley. pon further trust, that if any of them should be hindered, inter- , or disturbed in their visitation, rule, or government of the said ouse or of the poor therein, by or from, or by reason of any civil lesiastical, or other lawful power or authority whatsoever, that nd so long as such hindrances, disturbance, or interruption should ue, the said Trustees and Managers for the time being should

employ the said 60*l.* settled, or intended to be settled for the support of the same, or such other pious uses as Lady Hewley should appoint, by any writing signed by her in the presence of three or more witnesses and in default of such appointment, then to employ the same to such or the like charitable uses, as in the said deed of trust were afterwards appointed, and were thereinafter expressed or referred to. And as for and concerning the clear and residuary rents, issues, and profits of the said last-mentioned premises, which should be and remain over and above such part or parts of the rents, issues, and profits thereof, as were before mentioned, to be appointed to be so paid, distributed, and disposed as aforesaid, upon the same or like trust touching the paying and disposing of sums of money, yearly or otherwise, to poor godly preachers of Christ's holy gospel, and to poor widows of poor and godly preachers of the said gospel, and for the encouraging and promoting the preaching of the said gospel in poor places; and touching the disposing of sums of money, yearly or otherwise, for exhibitions for educating of young men for the ministry or preaching of the said Gospel, never exceeding [ ] * such young men at one time, and touching the disposing all the surplus of the same clear residuary rents, issues, and profits, in relieving godly persons in distress, with such proviso touching the having a primary regard, in the distribution of the last-mentioned charities, to such objects thereof as should be in York, Yorkshire, and other northern counties in England; and touching the continuance of the charitable allowance which should be made by the said Dame Sarah Hewley shortly before her death, to persons in York or Yorkshire, and also with such proviso and agreement for the said Dame Sarah Hewley having power to revoke, alter, or make void all or any of the trusts, charities, and orders before mentioned, to be contained in the said last-mentioned indenture or deed of trust, and for the appointing new ones, as in the said first-mentioned indenture or declaration of trust of January 1704 are expressed and declared, of or concerning the trust estates therein mentioned, and of or concerning the clear and residuary rents, issues, and profits therein mentioned of the same trust estates.

Lady Hewley afterwards, by an endorsement in writing bearing date the 10th day of May 1709, and by her signed and sealed in the presence of three credible witnesses, and made or written upon the back of the said last-mentioned indenture or deed of trust, did declare that it was her will and pleasure, that the management of the said hospital, as to the putting in the poor upon any vacancy, should be in the power of the said Thomas Coulton, and also of Timothy Hodgson, gentleman, Matthew Baycock, gentleman, Mr. Samuel Smith, grocer, Mr. Robert Rhodes, upholsterer, Martin Hotham, mercer, and William Hotham, mercer, all of the city of York, and such as should be chosen to succeed any of them when they should die.

The rules left by Lady Hewley, and referred to by the last-mentioned trust deed, are entitled "A Collection or Book of Rules, Orders, and "Directions, to be kept and observed as well by the Feoffees or Trustees "of the revenues of newly-erected hospital, almshouse, or habitation

* A blank in the deed.

"for ten poor people, built and settled upon them by Dame Sarah "Hewley of the city of York, widow, for the better government and "ordering of the same, as also by the said poor persons placed, or to be "placed in the same." And the rules are in part as follows, *viz.*

"I.—RULES and ORDERS to be observed by the Trustees and the major part of them."

Amongst these rules and orders are the following:—

"The said Feoffees or Trustees, upon every vacancy, by death or [6] "otherwise, of any of the ten poor persons placed in the said almshouse, "shall, before they proceed to any new election to fill up such vacancy, "cause the rules and orders written about the due qualifications of such "poor persons as are to be placed in the said almshouse, to be distinctly "read and perused, that they may the better join and concur in the "pursuance and observance of the same; and when any person is "chosen to fill up such vacancy, let any of the said Trustees read, or "cause to be read or rehearsed to such new-elected person, in the "presence of all the rest, the respective duties and offices required and "expected from each of them, in their respective stations or places.

"Let all the poor people to be elected into and placed in the same "almshouse be either poor widows, or women which were never married, "of the age of fifty-five years or upwards, to the number of ten poor "women: except when the said Trustees can find out a fit married "man, whose wife is sober and pious, whom they may judge able and "willing to read God's holy Word, or any other pious discourse to the "said hospitallers, and to pray with them daily, evening and morning, "and who may be admitted without scandal, he with his wife may be "received, to make up the tenth poor person in the said almshouse.

"Let none be chosen by favour, but by desert, as their poor condi-"tions or more pious inclinations shall merit Christian consideration "and pity.

"Let none under the age of fifty-five years be willingly chosen and "admitted; and if any should marry, then let them lose their salary and be removed."

"II.—RULES and ORDERS to be observed about the Qualities or Qualifications of the poor people to be elected into the said almshouse from time to time."

The rules and orders are in part as follows:—

"Let none be elected into the almshouse who have a clear personal "estate of above 60*l.*, or a real estate above the annual value of 3*l.*, "above all reprizes, and near relations that are able in estate, and "bound by the laws of God and nature, to relieve them at home.

"Let all persons to be elected prove their age to be above fifty-five "years, by good testimonials if required.

"Let none of evil fame or report be admitted into the hospital, but "such as are poor and piously disposed and of the Protestant religion, "not given to strong drink nor to gossipings; and such as have lived "infamously in their youth, or have been justly blemished with any "gross immorality, let them not so much as in old age be elected, with-"out good evidence of their repentance and amendment.

"Let every almsbody be one that can repeat by heart the Lord's

" Prayer, the Creed and Ten Commandments, and Mr. Edward Bowles' " Catechism.

" Let all the almspeople, when not disabled by weakness, duly repair " to some religious assembly of the Protestant religion every Lord's " day, forenoon and afternoon, and at other opportunities, to attend the " ordinances of God.

" Let them be ready to attend their alms-sisters in their sickness, " and to assist them by turns.

" Let no almsbody receive any visits on the Lord's day, except in case " of sickness; nor shall they show their rooms to any on that holy day.

" Let every almsbody, morning and evening, in private devotion " commend themselves to God in prayer, remember their foundress " Sarah Lady Hewley, while she lives, and after her death pray for her " trustees. If any of the almspeople shall offend against any of these " rules relating to them, let them be admonished first by one of the " Feoffees, and if that admonition prevail not, let them be admonished " the second time; but upon the third transgression, it shall and may " be lawful for the Trustees, or the major part of them, to remove and " turn out such disorderly persons with their effects, and to choose " another in their room.

" Let none be admitted into the hospital that will not make the following engagement, *viz.*

" I, A. B., being chosen into the hospital founded by Sarah Lady Hew- " ley, do solemnly promise that I will, to my power, sincerely observe " and keep all and singular those rules and orders above-written " (or any other that Sarah Lady Hewley shall, during her lifetime, " further appoint, subscribed by her own hand), which shall concern " me in my respective place; and I do hereby covenant and agree [7] " with the said Trustees, that in failure hereof, it shall and " may be lawful for them to withhold my salary and turn me out " of the hospital.

" Witness my hand (and seal, if required).

" The rules and orders above-written I appoint to be observed:

" Witness my hand:

(Signed) " SARAH HEWLEY."

Richard Stretton, the Trustee first named by Lady Hewley in the foundation deeds of her charity, was a Nonconformist of considerable note in those times, and Dr. Coulton, the original Preacher at Saint Saviour-gate Chapel, whose ministry Lady Hewley attended, and who was her friend and spiritual adviser, is also named by Lady Hewley as another of her original Trustees, and also as one of the Managers of the hospital or almshouse; and Timothy Hodgson, another of the Managers of the almshouse appointed by Lady Hewley, was her own private chaplain. And no doubt can be entertained, that the other Trustees and Managers named by Lady Hewley were Dissenters from the Established Church, within the protection of the Act of Toleration of the 1st of William and Mary, and not deniers of the Trinity, or subject to the penalties of the Act against Blasphemy, of the 9th and 10th of William the Third.

Mr. Bowles, whose Catechism Lady Hewley directs to be repeated by heart by the almswomen, as a qualification for admission to her hospital, was a Dissenter of great note. He was resident at York in the lifetime

ly Hewley, and was the minister at York Cathedral during the
f the Commonwealth. A tenth edition of his Catechism, printed
blished in the city of York, was produced as one of the exhibits
suit. The Catechism appears afterwards to have fallen into
as Dr. Calamy, in his Continuation to the Nonconformists' Me-
assigned the following reasons for reprinting it. "His (Bowles')
chism, which is as good a one for children as most I have seen,
g scarce and difficult to be met with, I think it not amiss to insert
re, as a valuable remains of this great and good man."
r Hewley's will commences with the following words: "Having
committed my immortal soul into the hands of my dear Redeemer,
washed in his blood and made meet to be partaker of the inhe-
ce of the Saints."
Hewley died on the 23d of August 1710, at the advanced age of
threee. She was attended in her last illness by Dr. Coulton, who
ed her funeral sermon, the original manuscript copy whereof is still
ed by the Trustees of Lady Hewley's charities, and was produced
of the exhibits in this suit. This sermon contains the following
: After speaking of Lady Hewley's great piety and of her noble
s, and particularly mentioning her hospital or almshouse, Dr.
n says, "After all these she thought herself an unprofitable ser-
and when any person told her of some good work she had done,
would sometimes answer with divine Mr. Herbert, 'Yes if it were
kled with the blood of Christ.' She thought none had more need
e merits of a Saviour to justify and save her."
e charities, from the time of Lady Hewley's death down to the
time, have always belonged to, and been distributed for the
of, Dissenters from the Established Church.
Trustees and Managers have from time to time been appointed,
nveyances to new Trustées executed.
fifth appointment and conveyance to new Trustees took place in
1755, when James Wyndlow was the sole survivor of the original
s, and the Reverend John Witter, a Dissenting minister, and
Moody, a Trinitarian Dissenter, and one Richard Gilpin Sawrey,
e only survivors of the immediate successors of the original
s; and the new Trustees appointed were Samuel Shore, Aymon
nd Thomas Lee. These new Trustees were persons of con-
e wealth and influence. They were the patrons of the Reverend
ne Cappe, a young Dissenting minister, who had been educated
llege for the education of orthodox Dissenting ministers, and
was appointed to be the assistant of the Reverend Mr. Hotham,
s then very old, as the preacher at the Saint Saviour-gate Chapel,
nonth of November 1755. Mr. Hotham died shortly afterwards,
Reverend Newcome Cappe was appointed to be the sole preacher
Saint Saviour-gate Chapel. Shortly after his appointment he
an Arian, and afterwards what is now commonly called an Uni-
He continued to be a great favourite of the Trustees, who passed
tion to allow him 60*l.* per annum out of the funds of this charity,
. having been allowed to Mr. Hotham, and they afterwards made
of the Sub-trustees or Managers of Lady Hewley's hospital or
se.
rst introduction of Unitarianism into these charities is attributed

to Newcome Cappe, who died in the year 1799, and was succeeded by the Reverend Charles Wellbeloved, one of the Appellants, as the sole preacher at the Saint Saviour-gate Chapel. The Appellant, the Reverend Charles Wellbeloved, is an Unitarian minister of considerable celebrity. The allowance of 60*l.* made to the Reverend Newcome Cappe was continued to the Appellant, the Reverend Charles Wellbeloved, and afterwards increased to 80*l.* a year, and he also was made one of the Sub-trustees or Managers of Lady Hewley's hospital or almshouse.

Some members of the families of the Shores and Lees continued to be Trustees and Managers of Lady Hewley's charities up to the time of filing the original information, and all the Trustees of the charities, or the great majority of them, in progress of time became Unitarians, and it was a subject of complaint, not only that the allowance of 80*l.* a year was made to a celebrated Unitarian minister, the Reverend Charles Wellbeloved, out of the funds of this charity, but that all the exhibitions for the education of young men designed for the preaching of Christ's holy gospel were sent to the Manchester College at York, an establishment supported by Unitarians, for the education of ministers of the Unitarian persuasion, and of which the Appellants, the Shores, were life governors. The Appellant, the Reverend Charles Wellbeloved, was the Theological Professor, and the Appellant, the Reverend John Kenrick, also a celebrated Unitarian minister, was the Classical Tutor at this College, and Mr. Kenrick as well as Mr. Wellbeloved took divinity students. Unitarian ministers were also allowed to partake largely of the benefits of the charity, and were included in the list of stipendiaries, as godly ministers of Christ's holy gospel.

In the year 1826, when the Commissioners appointed by Act of Parliament for inquiring into and correcting the abuses of funds and estates settled for charitable uses, were inquiring into this charity, 24th June 1826, a formal complaint was made to them of the abuse and misapplication of the charity funds, by devoting a great part of them for the support and spreading of Unitarian doctrine. The Commissioners in the course of this inquiry examined the Reverend Charles Wellbeloved, and subsequently made a report bearing date the 27th of January 1827; whereby they stated amongst other things, that they thought it must be considered, at the least, very questionable, whether preachers or students of Unitarian belief and doctrine could properly be admitted to receive stipends and exhibitions under Lady Hewley's charity, and that they thought that the question which had arisen in the case ought to be submitted to the consideration of a Court of Equity, in order that a judicial declaration might be pronounced as to the proper mode of administering and dispensing the charity in the particular respect above noticed, and that such directions might be given as the case might require, for securing its proper administration in future.

The Relators being desirous to have a judicial decision in conformity with the said report and opinion of the Charity Commissioners, His Majesty's Attorney-General at their relation exhibited an original information in the Court of Chancery on the 18th June 1830, which was afterwards amended 15th December 1831, and the information as amended was against (Samuel Shore the younger, deceased), the Appellants, Offley Shore, (John Pemberton Heywood, deceased), Peter Heywood, Thomas Walker, Daniel Gaskell, John Wood, the Reverend Charles

Wellbeloved, the Reverend John Kenrick, Thomas Bischoff, Varley by (deceased), Joseph Henry Oates, and George Palmes; and, stating amongst other matters to the effect hereinbefore set forth, aid amended information stated, that the last appointment and conce to new Trustees of the charity estates was by indentures dated ctively the 10th and 11th, and 11th and 12th days of May 1824, the charity estates were conveyed and assigned to Samuel Shore lder, of Mearsbrook in the county of Derby, esquire, since deceased, ppellant, Samuel Shore the younger, of Norton Hall near Shef- esquire, John Pemberton Heywood of Wakefield, esquire, since sed, the Appellants, Thomas Walker, of Killingbeck Hall near s, esquire, Daniel Gaskell, of Lupset House near Wakefield, es-, and William Walker, of Middleton Lodge near Doncaster, es-, since deceased, and Thomas Lee, of Leeds, esquire, as the Trust- and Managers of these charities; and that on the 4th day of May , the Appellant, Offley Shore, of Richmond Hill near Sheffield, the of the said Samuel Shore the younger, was appointed a Manager dy Hewley's charities, in the place of the said Samuel Shore the , deceased, his grandfather, and the Appellant, Peter Heywood of nner Temple, London, esquire, was at the same time appointed a ager, in the place of the said Thomas Lee, who relinquished the by reason of his infirmities, and that the Appellant, John Wood of Inner Temple, London, esquire, was appointed a Trustee in the of the said William Walker deceased; and that by the last ap- tment of new Sub-trustees or Managers of the said Dame Sarah ley's hospital or almshouse, the Sub-trustees or Managers of the hospital or almshouse, thereby nominated and appointed, were the llants, George Palmes, formerly of Naburn near York, and then ent somewhere abroad, the Reverend Charles Wellbeloved, the rend John Kenrick, both of the city of York, Varley Bealby, es-, deceased, of or near York, Thomas Bischoff and Joseph Henry s, both of Leeds; and that, save and except the said John Pember- Heywood, Peter Heywood, George Palmes, and John Wood, each every one of the said Trustees and Managers, Sub-trustees and rnors of Lady Hewley's charities, was in his religious belief what is nonly called an Unitarian, and was a member of, or belonged to ect, or class, or denomination of Christians commonly called Unita-, and attended a congregation or chapel commonly called or pass- nder the ordinary and popular appellation of an Unitarian congre- n or chapel, or attended a chapel where doctrines of the Unitarian asion were preached or taught. That the Reverend Charles Well- ed was the sole preacher of the Saint Saviour-gate Chapel, and he was what is commonly called an Unitarian minister, or a mini- of the Unitarian persuasion or denomination, and that he was what mmonly called an Unitarian in his religious belief and doctrine, and he was a member of or belonged to the sect, or class, or denomina- of Christians commonly called Unitarians, and that he preached and t what are commonly called or believed to be Unitarian doctrines e said chapel, and that the congregation attending the said chapel ged to, or were of the sect, or class, or denomination of Christians nonly called or passing under the ordinary and popular appellation itarians; and that the said Reverend John Kenrick was what is

commonly called an Unitarian minister, or a minister of the Unitarian persuasion or denomination, and that he was what is commonly called an Unitarian in his religious belief and doctrine, and that he was a member of, and belonged to the sect, or class, or denomination of Christians commonly called Unitarians, and that he preached and taught what are commonly called or believed to be Unitarian doctrines, and that his congregation, or the congregation which attended the chapel where he usually preached, were of the sect, or class, or denomination of Christians commonly called or passing under the ordinary and popular appellation of Unitarians; and that the annual rents and profits of Lady Hewley's charities amounted to 2,900*l.* or thereabouts, and that a great part of the said rents and profits were then applied by the said then Trustees, Sub-trustees, and Managers, in and towards the support and propagation of doctrines commonly called Unitarian, by giving stipends to the [10] ministers, and to the widows of the ministers, and to the poor members of the congregations of the sect, or class, or denomination of Christians commonly called Unitarians, and by sending formerly six exhibitions, and afterwards five exhibitions to students at the Manchester College at York; and that the said College was commonly called or passed under the ordinary or popular appellation of the Unitarian College, or the Unitarian College at York; and that the said Manchester College was reputed and commonly believed to be, and was in fact an establishment supported by the sect, or class, or denomination of Christians commonly called Unitarians; and that the said College was principally for the purpose of supplying a succession of regularly educated ministers in their class of Dissenters, as appeared from the thirty-second annual printed report of the said College, made in the month of August 1818, and the printed circular letter of the said Appellant, the Reverend Charles Wellbeloved, at the end of the said report; and that the said charity funds were further misapplied, by making an allowance to the said Appellant, the Reverend Charles Wellbeloved, of 80*l.* a year as a poor and godly preacher of Christ's holy gospel; and that the qualifications required by Lady Hewley for the admission of the almswomen to the hospital, and the rules directed by her to be kept there, had been totally disregarded by the said Sub-trustees or Managers of the said hospital; that the Creed and Mr. Bowles's Catechism had been wholly rejected and laid aside, and that no other Catechism was supplied to the almswomen or taught in the hospital; and that the almswomen on the Lord's Day attended the chapel in Saint Saviour-gate, where the Reverend Charles Wellbeloved preached; and that the said Trustees, Sub-trustees, and Managers of these charities did not then make an allowance to the widows of godly preachers in distress, as a distinct class, and that no part of the charity funds were then applied for the encouragement of the preaching of Christ's holy gospel in poor places; and that only one exhibition was then given to any Dissenting college, or academy, or school for the education of orthodox ministers of Christ's holy gospel; and that, in the year 1821, an application was made on the behalf of the Dissenting College at Rotherham, to send one of the exhibitions under Lady Hewley's charities to that establishment, which was refused on the ground that their number was full, they (the Trustees) having sent exhibitions to the said Manchester College, being the whole number of exhibitions which they then sent. That in or about

ı of September 1829, an application was made on behalf of the g College at Blackburn in Lancashire, to send one of the exhi- der Lady Hewley's charities to that establishment, and the same gly recommended by the late Rev. William Roby, and by the Drs. Raffles and Clune, and the Reverend Messrs. McAll and which application was refused, on the ground that there was ry in the list of exhibitions to students from the said Trustees, there was no present prospect of one; and that an application by and on the behalf of the Reverend Mr. Calvert, as a poor and acher of Christ's holy gospel, resident at Morley in the county and only receiving from his chapel a very small yearly stipend, ı refused, because the list of distributions to poor and godly mi- as full; and that the said list of distributions at the time of such ns and refusals, as aforesaid, contained the names of many mi- preachers belonging to the sect, or class, or denomination of ı commonly called Unitarians, and that thereby the said appli- e excluded and deprived of the benefit of Lady Hewley's cha- nd the amended information, amongst other matters, charged, harity funds had been, and were then applied to or for the be- reachers or ministers of what are commonly called Unitarian nd congregations, and to persons of what are commonly called sentiment, belief, and doctrine; and that the sect, or class, or tion of Christians commonly called Unitarians, was then an d and well-known sect, class, or denomination of Christians; the said Samuel Shore the younger, deceased, the Appellants, ore, Thomas Walker, Daniel Gaskell, the Reverend Charles red, the Reverend John Kenrick, Thomas Bischoff, Varley by, deceased, and Joseph Henry Oates, were wont to term or selves Unitarians; and that the said Samuel Shore the young- ed, the Appellants, the Reverend Charles Wellbeloved, and end John Kenrick, were severally and respectively members of ation denominated 'the British and Foreign Unitarian Associa- that annual reports were printed and published, or distributed, d Association, and that by the said printed reports the said As- was stated to be framed for the promotion of the principles of Christianity at home and abroad, the support of its worship, ion of biblical, theological, and literary knowledge on the to- ected with it, and the maintenance of the civil rights and inter- ı professors; and the first leading object of the said association be said reports, stated to be the promotion of Unitarian worship Britain, by assisting poor congregations, and sending out or sistance to missionary preachers, and the second, the publica- distribution of books and tracts, controversial and practical, in orm; and that the religious belief and doctrine of the sect, or denomination of Christians, commonly called Unitarians, was posed to, and at variance with the belief and doctrine of the ed Church, and also wholly opposed to, and at variance with and doctrine of the great body of Dissenters from the Esta- hurch who were protected by the Act of Toleration of the 1st n and Mary, at the time of the foundation of Lady Hewley's That the said Act was an Act framed for the indulgence of s in all forms and modes of worship then in use amongst them,

and the enactments of which the great body of Dissenters themselves had a principal part in drawing up; and that, by such Act, no toleration or protection was extended to the sect or class of Christians now commonly called Unitarians; and that the religious differences between the Established Church and the great body of Dissenters were not upon articles of faith, and the object of religious adoration or worship, but upon questions or articles of church government and of the divine origin thereof, and as to forms and ceremonies; and that the great body of Dissenters distinguished in those times by the names of Presbyterian, Independent, and Baptist, differed among themselves solely on the said questions or articles of church government, and as to its divine origin and power, and as to forms and ceremonies, and that upon articles of faith and the object of religious adoration or worship, they were all agreed amongst themselves and with the Established Church, as appears by and from the Larger and Shorter Catechism prepared by the Assembly of Divines, which said Shorter Catechism is now in common use for the instruction of young persons amongst the great body of Dissenters, commonly called the orthodox Dissenters. And that, at the time of the foundation of Lady Hewley's charities, the act of 9th and 10th William the Third against blasphemy was in force, and that the doctrines now held and preached by the denomination of Christians commonly called Unitarians were then held to be blasphemous, and that in those times the denial of the doctrine of the Trinity was punishable with pains and penalties, under the said statute of 9th and 10th William the Third; and that chapels in which doctrines which are now commonly called Unitarian doctrines were preached, were not then legal places of public worship; and that the belief and doctrine of the present sect, or class, or denomination of Christians commonly called Unitarians, was then illegal and held in great abhorrence by the legislature, and by the Established Church, and by the great body of Dissenters, including the Presbyterians, the Independents, and Baptists of those days. And that the term or name Unitarian, as the name of a religious sect, was of modern use, and was not in those times generally used, persons of the same, or nearly of the same persuasion, being then called Socinians; and that there was no difficulty in distinguishing the being and doctrines of the sect, or class, or denomination of Christians now commonly called Unitarians, from the other sects of Dissenters commonly called the orthodox Dissenters. That the belief and doctrines of the class, or sect, or denomination of Christians commonly called Unitarians, were set forth in several of the books and tracts distributed by the said British and Foreign Unitarian Association, and that a catalogue of the said [12] books and tracts was printed and published, or distributed, in each of the annual printed reports of the said Association; and that the class, or sect, or denomination of Christians commonly called Unitarians, rejected as utterly unscriptural, each and every one of the following doctrines, that is to say: the Trinity of persons in the Deity; the Incarnation or true and perfect divinity of the person of the Son of God; that the Son of God is the second person in the Trinity, and equal with the Father; the divinity and personality of the Holy Ghost or Holy Spirit, as the third person in the blessed Trinity, and equal with the Father and the Son; the forgiveness of sins and salvation through the merit of the Atonement; the Atonement or satisfaction for sin made by the death of

Christ; that Jesus Christ is really and truly God, and as such, the proper object of religious worship; and the doctrine of original sin, or that man is born in such a state, that if he were to die in the condition in which he was born and bred he would perish everlastingly. And that each and every one of the doctrines aforesaid was rejected as utterly unscriptural by the said Appellants, the Reverend Charles Wellbeloved and the Reverend John Kenrick; and that many of the class, or sect, or denomination of Christians commonly called Unitarians, called themselves Presbyterians, and called their chapels Presbyterian chapels, and that the term Presbyterian, as used by the sect, or class, or denomination of Christians commonly called Unitarians, had no definite meaning as to opinions or discipline, and that they differed, both in doctrine and discipline, from the acknowledged creed and ecclesiastical government of the churches recognized as Presbyterians; that their congregations were not subject to the form of government which characterizes Presbyterian churches, and that their ministers or preachers were not subject to a Presbytery or to a Synod. And that the said Appellant, the Reverend Charles Wellbeloved, represented himself and his congregation to be Presbyterian; that the said Defendant was not subject to a Presbytery or to a Synod, and that his congregation had not that form of government which characterizes Presbyterian churches, and differed, both in doctrine and discipline, from the acknowledged creed and ecclesiastical government of the churches recognized as Presbyterian. And that the said acting Trustees and Managers of Lady Hewley's charities had shown an undue preference to Unitarians, and that the funds of the charities had been applied in support of the cause of Unitarianism, to the neglect and prejudice of the true objects of the charities. That, for many years, the acting Trustees of Lady Hewley's charities regularly sent six exhibitions, of 20*l.* each, to students at the Manchester College, York. That Samuel Shore the elder, deceased, Samuel Shore the younger, deceased, and the Appellants, Daniel Gaskell, had been presidents of the said College, and that the said Samuel Shore the younger, deceased, Daniel Gaskell, and Offley Shore, were, at the time of filing the information, Life-trustees of the said College, in consequence of benefactions; and that the said Defendant, the Reverend Charles Wellbeloved, was the Theological Tutor and Principal of the said College, and the said Defendant, the Reverend John Kenrick, was the Classical Tutor of the said College; and that the said Reverend Charles Wellbeloved and the Reverend John Kenrick both took divinity students in the said College; and that the receipts of the said College consisted in part of congregational collections, and that certain ministers were Life-trustees in consequence of collections in their congregations, and that such ministers were each and every one of them of the class or denomination of Dissenters commonly called Unitarians, as appeared from the annual printed reports of the said College. And that the chapel of Rossendale, Lancashire, was commonly reputed to be, and was commonly called an Unitarian chapel; that the said chapel being considerably in debt, an application was made to the Trustees of Lady Hewley's fund for assistance; that the Trustees received a memorial, stating at length the doctrines believed and taught by the Applicants, and upon the said memorial granted a sum of 12*l.*, which had been continued annually, and that the said memorial contained the following passage:

[13] "We began to examine the doctrine of original sin as taught, and "we thought we saw sufficient reason to discard such an unscriptural, "irrational doctrine. We proceeded to examine the doctrine of atone-"ment: we cast this ancient piece of orthodoxy to the moles and to the "bats. After this we relinquished the doctrine of the divinity of Christ. "Indeed, the place at which we are now arrived is supposed by our or-"thodox neighbours to be the mystery of iniquity."

And that the said memorial was at the time of filing the information lost or destroyed, and that the same was printed at or about the time it was stated to be published in the Monthly Repository, which was then commonly reputed to be, and commonly called the Unitarian periodical, and which periodical was then in the hands of the said Foreign and British Unitarian Association, and was commonly believed and considered to be the organ of their opinions and feelings, as appeared from the fifth report of the said association. That the said Defendants still continued for many years to allow 12*l.* per annum to the preacher, or to the support of the said Chapel of Rossendale; and that the said Trustees of the charities for many years allowed 80*l.* per annum out of Lady Hewley's charities to the said Defendant, the Reverend Charles Wellbeloved, a Sub-trustee of the charities; and that the said Appellant, the Reverend Charles Wellbeloved, preached a sermon on Sunday, the 23rd day of January 1825, in the said Saint Saviour-gate Chapel at York, in aid of a subscription for the erection of an Unitarian Chapel in Calcutta, and that the said sermon was afterwards printed and published at the unanimous request of his audience; and that in the said sermon the said Appellant styled himself, and spoke of himself as being an Unitarian, and addressed his congregation as being Unitarians, and promulgated what are commonly called or believed to be Unitarian doctrines, as by the said printed sermon appeared; and that all the ministers educated at the said Manchester College, under the said Defendant as Theological Tutor and Principal, became preachers of what is commonly called Unitarian doctrine, and became ministers of what are commonly called Unitarian chapels and congregations; and that many of the ministers who had been educated at the said College called themselves Presbyterians; and that the said Trustees applied no part of Lady Hewley's charities to encourage the preaching of Christ's holy gospel in poor places. That the said Trustees only sent five exhibitions from the charities, and only one thereof, until the years 1828 and 1829, to a Trinitarian or orthodox Dissenting college. That seven exhibitions, at least, ought to be sent; and that the Trustees ought therefore to be removed from being Trustees and Managers of Lady Hewley's charities, and that new Trustees ought to be appointed by the Court of Chancery.

And the said information prayed, That the Lord Chancellor would be pleased to take the case of Lady Hewley's charities into his consideration, and that his Lordship would be pleased to declare, by the decree of the Court of Chancery, that ministers or preachers of what is commonly called Unitarian belief and doctrine, and their widows, and members of their congregations, or persons of what is commonly called Unitarian belief and doctrine, are not fit objects of Lady Hewley's charities; and that exhibitions to the said Manchester College, or to any other colleges or schools where what is commonly called Unitarian belief or doctrine was taught or incul-

cated, were not fit exhibitions for promoting the education of ministers of Christ's holy gospel, within the intent and meaning of Lady Hewley's charities. And that his Lordship would be pleased to declare by the decree of the Court, that the allowance of 80*l.* to the said Appellant, the Reverend Charles Wellbeloved, as the preacher of Saint Saviour-gate Chapel, was an unfit allowance or distribution of the charity funds, by reason of the said Appellant, the Reverend Charles Wellbeloved, having been and then being one of the Sub-trustees or Managers of a part of these charities, [14] and by reason of his not being a poor preacher, and not being a godly preacher of Christ's holy gospel, within the intent and meaning of Lady Hewley's charities, and by reason of what is commonly called Unitarian belief and doctrine being preached and inculcated by him in the said Saint Saviour-gate Chapel; and that the said allowance of 80*l.* might be wholly discontinued in future, and that such order might be made, as to the past payments of the said allowance of 80*l.* to the Appellant, the Rev. Charles Wellbeloved, as to the Court should seem just. And that all the objects of Lady Hewley's charities might be decreed fairly and in such manner to participate in these charity funds as she meant and intended; and in particular, that a fair and just proportion thereof might be distributed to and amongst poor and godly widows of poor and godly preachers of Christ's holy gospel, giving a preference to York, Yorkshire, and the northern counties; and that a fair and just proportion thereof might be applied for the encouraging and preaching of Christ's holy gospel in poor places; and that Lady Hewley's qualifications and conditions for the admission of almswomen to the said hospital or almshouse, and her rules for the management and regulation of the said hospital, or such of them as to his Lordship should seem meet, might be restored or enforced in future, in such manner as his Lordship should be pleased to direct. And that his Lordship would be pleased to declare by the decree of the Court, that such Dissenters alone as were commonly called orthodox Dissenters, and as would have been within the protection of the Act of Toleration of the 1st of William and Mary at the time of the foundation of these charities, and would not then have been subject to the penalties of the Act of the 9th and 10th William the Third against blasphemy, could be considered as coming within the intent and meaning of Lady Hewley, and as entitled to participate in the benefit of her charities; and that the Appellants, the then Trustees, Sub-trustees, and Managers of the charities, or such of them as his Lordship should seem proper, might be removed by the decree of the Court from being Trustees, Sub-trustees, or Managers of the charities. And the said amended information prayed an injunction, to restrain the Trustees from proceeding to the election of any new Trustees, Sub-trustees, or Managers of Lady Hewley's charities, and the appointment of a Receiver, or that his Lordship would be pleased to pronounce such declaration as to the proper mode of administering and dispensing Lady Hewley's charities, and to give such directions as the case required, for securing the charity estates and funds, and to provide for the better administration thereof in future; and prayed further relief in the usual form.

All the Defendants appeared and put in their answers, both to the original and to the amended information. The answer of the Defendant, the Reverend Charles Wellbeloved, to the original information, was sworn 15th December 1830. And the said Reverend Charles Wellbeloved thereby stated, amongst other things, that he had been informed and believed it to be true, that Lady Hewley built the chapel in Saint Saviour-gate, York, principally, if not wholly, at her own expense, and that she belonged to the congregation frequenting the same; and that he believed it to be true that Dr. Coulton and Mr. Hotham were the first preachers at the said chapel, and that they continued to officiate as such preachers till long after the death of Lady Hewley; and that Dr. Coulton and Mr. Hotham were Dissenters from the Established Church, and that they were Nonconformists, and that they held and preached the doctrines common amongst Presbyterians of that period, but what doctrines in particular he was unable to set forth. And he admitted it to be true, that a book of rules, which was usually kept by him, belonged to the charity, and appeared to have been signed by Lady Hewley; and stated, that he believed it to be true that Lady Hewley died at the time in the [15] information mentioned, and that Dr. Coulton preached her funeral sermon, for that a manuscript copy of a sermon, supposed to have been preached by Dr. Coulton on the occasion aforesaid, was then in his possession. And he admitted that on Mr. Cappe's death he was elected to succeed him, as sole preacher at the Saint Saviour-gate Chapel, and that he was still the sole preacher at the said Chapel; and that he was the Theological Tutor, and that he did teach biblical criticism at the seminary called the Manchester College; and that the said College was an establishment chiefly supported by persons who call themselves Presbyterian Dissenters, and was for the purpose of educating ministers of that denomination; and that he did, upon the death of Mr. Cappe, receive out of the funds of the charity the same annual stipend which Mr. Cappe had received (namely, 60*l.* a year), from the time of Mr. Cappe's decease to the year 1808, when it was increased to, and had down to the filing of the information been continued at 80*l.* a year. And he admitted it to be true, that the Creed and Mr Bowles's Catechism were not taught or repeated in the hospital.

The answer of the Defendants to the original information, Samuel Shore the younger, deceased, John Pemberton Heywood, Thomas Walker, Peter Heywood, Daniel Gaskell, and Offley Shore, was filed 17th December 1830, and thereby they stated, amongst other matters, that they believed that Lady Hewley built the chapel in Saint Saviour-gate, York, principally, if not wholly, at her own expense, and that she belonged to the congregation frequenting the same, and that they had heard and believed that the said chapel was a Presbyterian chapel, and that the teachers and ministers thereof were Dissenters from the Established Church, and professed the doctrines common amongst the Presbyterians of that time. And they admitted the execution of the foundation deeds and book of rules signed by Lady Hewley. And they further stated, that they believed that Mr. Bowles did live in York, and that he had been a preacher in York Minster during Lady Hewley's lifetime, and was well known to her; and that they believed it to be true, that Lady Hewley continued to be a Dissenter from the Established Church to the day of her death. And the said Defendants said, that the

ointment and conveyance to new Trustees of the said charities, s to filing the information, was by indentures dated respectively h and 11th, and 11th and 12th of May 1824, and was made to Lee, Daniel Gaskell, and William Walker, since deceased, and irs, to the use of them and the said Samuel Shore the elder, also eceased, Defendants, Samuel Shore, and John Pemberton Hey- and Thomas Walker, and their heirs; and that the said Thomas ving relinquished the said trust by reason of his infirmities, and l Samuel Shore the elder having died, the Defendants, Offley and Peter Heywood, were on the 14th of May, 1829, appointed ers of the said charity in their places; and that the said William had also since died, John Wood of the Inner Temple, London, e, was at a meeting of the Trustees on the 9th of September then 830), appointed a Manager of the said charity in his place; and indentures dated respectively the 1st and 2nd, and 2nd and 3rd October 1830, then last, the said trust estates were conveyed to l Defendants, Offley Shore and Peter Heywood, and the said Vood, and their heirs, to the use of them and the said other De- ts and their heirs; and that George Palmes, Charles Wellbeloved, Bealby, deceased, the Reverend John Kenrick, Thomas Bischoff, seph Henry Oates, were then the Sub-trustees of the said cha- And the said Defendants by their said answer stated, that they d it to be true that the sum of 12*l.* a year, for some years past o the filing of the said information, had been paid out of the funds charity to the preacher of the chapel called New Church, Ros- , but Defendants did not know or believe that the same was a n chapel. That they believed it to be true, that a memorial from ce was presented to them, because it was required by their rules memorial should be presented, but Defendants said that such emorial was not preserved, and Defendants were unable to set he contents thereof; however Defendants said, they did not that the same was to the purport or effect set forth in said in- ion, because, although Defendants had no recollection of the parti- urport of the memorial so presented, Defendants were convinced same had been to the effect stated in said information, same would re been recommended and signed as was required by two respect- eighbouring ministers, neither would the Trustees have given on to such statements.

eptions were taken to this answer, on the ground that the Defend- he Trustees, had not set forth a copy of the list of beneficiaries hibitions granted and given by the Trustees and Managers of Hewley's charities; and exceptions were taken to both answers, ground that the Defendants had not stated whether they were ians in their religious belief, and what the peculiar doctrines of itarians were.

Defendants submitted to the exceptions, so far as regarded the beneficiaries; and put in a further answer on 25th March 1831, forth the required list of beneficiaries by way of schedule.

the Defendants argued the exceptions as to their not having stated religious belief, before his Honour the Vice-Chancellor, on the l that they were not bound to make any disclosure as to their re- belief; the Vice-Chancellor allowed the exceptions. The De-

fendants appealed to the Lord Chancellor Brougham, who confirmed the decision of the Vice-Chancellor.

The Defendant to the original information, the Reverend Charles Wellbeloved, put in his answer to the said exceptions on the 15th October 1831, which was in part in the following words:

"That the sense in which the term Unitarian is used in said information "not being defined, Defendant is unable to set forth whether he "is an Unitarian in his religious belief and doctrine, in the sense "in which it is there used. That he believes that very few persons "agree in the definition of the term Unitarian, and that sects main- "taining very different opinions claim it for themselves. That he "doth not agree in some very important points of doctrine with "any sect that either takes to itself, or receives from others, the "appellation of Unitarian. That he uniformly represents himself, "and desires to be considered by others, as a Protestant Dis- "senter of the Presbyterian denomination, and as one who firmly "believes in the divine mission of Jesus Christ, and holds no other "doctrines than those contained in Christ's holy gospel, to all of "which Defendant yields a full and cordial assent. However, De- "fendant admits it to be true, that in the sense in which Defend- "ant uses the term Unitarian, and which is hereinafter set forth, "he is a Unitarian in his religious belief and doctrine. That in "using the term Unitarian as applicable to himself, he means more "especially to denote that he believes and professes the following "Christian doctrines (that is to say):

"That to know God to be the true God, and Jesus the Christ "whom he hath sent, is eternal life.

"That it is Defendant's duty to worship God according to the "precepts and the example of his divine Lord and Master, who "taught his disciples to pray to God their Father in Heaven, and "to ask of Him what they needed in his name.

"That it is his duty to ascribe glory to the only wise God "through Jesus Christ.

[17] "That he acknowledges Jesus to be the Word that in the begin- "ning was with God, and rejoices in the doctrine of the Evange- "list, that God so loved the world that he sent forth his only be- "gotten Son into the world, not to condemn the world, but that "the world through him might be saved.

"That he believes that God having sent him forth, was with him. That "the works which he did, and the words which he spake, were not "his own, but the words of the Father which sent him, and whose "will he came to do.

"That he believes that Jesus Christ was (as he said of himself) a man "who spoke the truth he heard from God, and as God commanded "and instructed him so he spoke.

"That Defendant believes, according to the words of the Apostle Peter, "that Jesus of Nazareth was a man approved of God by miracles, "and wonders, and signs, that God did by him. That having "been crucified and slain, God raised him from the dead and made "him Lord and Christ: that then he was glorified by God. That, "in conformity with the doctrine of the inspired Apostle, Paul, "Defendant acknowledges and believes in one God, the Father, of

" whom are all things, and one Lord, Jesus Christ, by whom are all
" things, and we by him; that there is one God, and one Mediator
" between God and man, the man Jesus Christ, by whom God
" hath reconciled us to himself, who was made sin for us that we
" might be the righteousness of God in him, who gave himself for
" us, that he might redeem us from all iniquity, and purify unto
" himself a peculiar people zealous of good works.

That Defendant acknowledges Christ as the image of the invisible
" God, the first-born of every creature, in whom it pleased the
" Father all fullness should dwell, who was made a little lower
" than the Angels, but for the suffering of death crowned with
" glory and honour; that by the grace of God he should taste
" death for every man; that he was made in all things like unto
" his brethren, in all points tempted like them, yet without sin, and
" whom having become obedient to death, God highly exalted,
" giving to him a name above every name, that at the name of
" Jesus every knee should bow, and every tongue confess that
" Jesus Christ is Lord, to the glory of God the Father.

That Defendant believes, that the purpose and grace of God was
" made manifest by the appearing of Jesus Christ, who hath abo-
" lished death and brought life and immortality to light through
" the Gospel.

' That in the day when God shall judge the secrets of men by Jesus
" Christ, he will render to every man according to his deeds.

' That to the before-mentioned doctrines of Christ and his Apostles
" Defendant gives his unqualified assent, and that whatever is
" taught in Christ's holy gospel, concerning the existence, per-
" fections, and government of God, the person and the office of
" Christ, the terms of pardon and acceptance with God, the duties
" of life, and a future state of righteous retribution, Defendant
" gratefully and cordially receives and professes as divine truth;
" and save as aforesaid, Defendant cannot set forth as to his belief
" or otherwise, whether or not Defendant is an Unitarian in his
" religious belief and doctrine. However, Defendant saith, that he
" is made a Defendant to the said information in his character of a
" Trustee or Manager of the hospital in said information mentioned;
" and Defendant humbly submits, that in his said character of
" Trustee, it is wholly immaterial what are the particular religious
" opinions of Defendant, and humbly submits that he ought not to
" [18] have been compelled to answer as to the particulars of his
" religious belief.

" That in the Saint Saviour-gate Chapel at York, in said information
" mentioned, Defendant doth not preach the received doctrines of
" any particular sect, but he preaches that only which, after a dili-
" gent and impartial study of Christ's holy gospel, he conscien-
" tiously believes to be the pure doctrine of Christianity. How-
" ever, Defendant admits, that he doth in said Chapel preach doc-
" trines in accordance with the doctrines herein-before set forth by
" him in illustration of the sense of the term Unitarian as used by
" Defendant. That he cannot take upon himself to state what is
" the religious belief of the members of the congregation meeting
" at the Chapel in Saint Saviour-gate, York, for Defendant saith
" he has made no inquiries, and received little information on the

" subject from the major part of them; but from their continued
" attendance on his ministry, Defendant presumes that their views
" of Christian doctrine are something like his own, and that they
" approve of his preaching; and save as aforesaid, Defendant can-
" not set forth whether or not the doctrines of Unitarianism, or
" of Unitarian Christianity, are preached by Defendant in the Saint
" Saviour-gate Chapel at York, nor whether or not the congrega-
" tion attending said chapel is a congregation of Unitarians.

" That the Manchester College in the said information mentioned, is
" supported chiefly by Protestant Dissenters of the Presbyterian
" denomination. That it is an establishment for the purpose prin-
" cipally of supplying the churches of that denomination with a
" succession of ministers, but not for the purpose of instruction in
" the peculiar doctrine of any sect. That no such instruction is
" given, but that the principle upon which the institution is esta-
" blished and conducted is, that every student shall be left to the
" free and unbiassed exercise of his own private judgment in mat-
" ters of religious opinion. That as the Theological Tutor at the said
" establishment, he most scrupulously adheres to that principle,
" endeavouring to impart to his pupils such instruction only as
" shall qualify them to interpret the Scriptures for themselves, ex-
" cite in them a love of truth and a reverence for its dictates, and
" form in them a habit of searching the Scriptures. That the an-
" swers in Mr. Bowles's Catechism are almost uniformly given in
" the words of Scripture or nearly so, and the whole is drawn up
" with so much judgment, caution, and moderation, that an Anti-
" trinitarian Catechist might use it."

The Defendants to the original information, Samuel Shore the younger, deceased, John Pemberton Heywood, Thomas Walker, Peter Heywood, and Offley Shore, put in their answer to the exceptions 15th October 1831, by which they stated, that the sense in which the term Unitarian was used in the said information not being defined, they were unable to set forth whether they were Unitarians in the sense in which it was there used, and that they uniformly represented themselves, and desired to be considered by others, as Protestant Dissenters of the Presbyterian denomination, and as persons who firmly believe in the divine mission of Jesus Christ, and hold no other doctrines than those contained in the holy gospel, to all of which they yielded a full and cordial assent. However, they admitted it to be true, that in the sense in which they use the term Unitarian, they were Unitarians in their religious belief and doctrine; and that they had read the further answer of the Defendant, the Reverend Charles Wellbeloved, and that they used the term Unitarian in the sense in which it is there defined.

[19] The Defendant Daniel Gaskell put in a separate answer to the exceptions, to the same effect as the answer of the Shores, the Heywoods, and Thomas Walker.

These answers were not deemed sufficient, and the Defendants were ordered to put in a further answer to the exceptions. Whereupon the information was amended, for the purpose of bringing before the Court the Trustees and Managers who had been appointed subsequently to the filing of the original information, and for the purpose of defining the sense in which the term Unitarian was used by the informants, by the setting forth the peculiar doctrines commonly held and professed

Unitarians in general, and by the Defendants, the Reverend
ı Wellbeloved and John Kenrick, in particular.
Defendants to the amended information, the Reverend Charles
loved, the Reverend John Kenrick, Thomas Bischoff, Varley
, Joseph Henry Oates, and George Palmes, put in their answer
amended information, 17th April 1832, whereby they admitted
ey were the last-appointed Sub-trustees or Managers of Lady
/'s hospital or almshouse; and the Reverend Charles Wellbe-
ıdmitted it to be true, that he was a minister of the Unitarian
ıion, according to the sense of the term Unitarian as explained
in his further answer to the original information, and that he
Unitarian in his religious belief and doctrine according to the
foresaid, and that he was one of the governors of the hospital
: sole preacher at Saint Saviour-gate Chapel, and that he was in
eipt of about 263*l.* a year as the Theological Tutor and Principal
said Manchester College, for his salary and his fees for divinity
ı at the said College.
the Defendants, the Reverend Charles Wellbeloved and the Re-
John Kenrick, admitted it to be true, that they and the Defen-
ımuel Shore the younger, were members of the association deno-
d the British and Foreign Unitarian Association.
the said Defendants, the Reverend Charles Wellbeloved and the
nd John Kenrick, stated, that in so far as the doctrine of a Tri-
persons in the Deity is to be found in the Scriptures, the Pro-
Dissenters called Unitarians receive the same as scriptural; and
so far as such doctrine is not to be found in the Scriptures, but
ther or otherwise, the Protestant Dissenters called Unitarians re-
: same as unscriptural. And with regard to the other doctrines
ıd professed by the Unitarians, and set forth in the said amended
ıtion, the said two Reverend Defendants answered in the same
r and form as with regard to the doctrine of the Trinity.
Defendants to the amended information, Samuel Shore the
:r, deceased, John Pemberton Heywood, Thomas Walker, Peter
od, Offley Shore, and John Wood, put in their answer 25th
832, whereby they stated, that they admitted it to be true, that
books kept by the original Trustees and their immediate succes-
rior to the year 1729, were then lost, and that all the books kept
said original Trustees and their successors, between the years
ınd 1762, were then lost, and that the only ancient books then
ing in the hands of the then present Trustees and Managers of
d charities, out of all the books kept by the original Trustees or
nmediate successors, from the foundation of the said charities to
ır 1762, was a book containing some imperfect entries from the
'29 to the latter end of the year 1733. And they admitted it to be
at Samuel Shore the elder, deceased, Samuel Shore the younger,
ed, and the Defendant Daniel Gaskell, had all been Presidents of
ınchester College, and that the Defendants, said Samuel Shore the
:r, deceased, the said Defendant Offley Shore, and the said Defen-
Daniel Gaskell, were then Life-trustees of the said College in
uence of benefactions; and that they believed it to be true, that
e Defendant, the Reverend John Kenrick, was the Classical Tutor of

the said Manchester College, and that the Defendant, the Reverend Charles Wellbeloved, and the said Defendant, the Reverend John Kenrick, did both take divinity students. And all the said Defendants said, that it appeared by the books of the said trust estate, and they believed it to be true, that the Trustees for the time being of the said trust estate allowed the sum of 12*l.* per annum to the preachers of the said chapel of Rossendale, for several years prior and down to the filing of the said information. And with regard to their religious belief, they referred to the statement made by the Reverend Charles Wellbeloved, in his answer to the amended information.

These answers were considered to be insufficient, and a further answer was required from the said Defendants, as to their religious belief, and as to the peculiar doctrines held by the Unitarians.

The Defendants to the amended information, the Reverend Charles Wellbeloved and the Reverend John Kenrick, and the other Sub-trustees, put in their further answer to the amended information, 29th October 1832. By this answer the Reverend Charles Wellbeloved said, he admitted that he was what is commonly called an Unitarian minister, or a minister of the Unitarian persuasion, and preached what are commonly called or believed to be Unitarian doctrines, in the Saint Saviourgate Chapel, and that the Congregation attending the said chapel belonged to what is in the amended information stated to be the class or denomination of Christians commonly called, or passing under the ordinary and popular appellation of Unitarians. However, the said Defendant, the Reverend Charles Wellbeloved, said that he was a minister of the Unitarian persuasion only according to the sense of the term Unitarian explained by him in his said former answer to the said original information. And the said Defendant, the Reverend John Kenrick, made a statement to the like effect with regard to his religious belief. And all the said Defendants said, they believed it to be true that the Defendants, Offley Shore, Daniel Gaskell, Charles Wellbeloved, John Kenrick, Varley Bealby, deceased, and Joseph Henry Oates, but no others of the Defendants to the amended information, were wont to term or call themselves Unitarians; but that they were wont to term or call themselves so, only in the sense in which such term was explained in the former answer of the said Defendants; and that they believed it to be true, that the Chapel of Rossendale, Lancashire, was commonly reputed to be, and was commonly called an Unitarian Chapel. However, they believed it was no otherwise an Unitarian Chapel, than in the sense in which that term was explained in their former answer.

Samuel Shore the younger, deceased, and the other Trustees, put in their further answers to the amended information, to the same effect as the further answer of the Reverend Charles Wellbeloved and John Kenrick and others.

These answers containing no clear or intelligible admission as to the religious belief of the Defendants, and as to the doctrines held by the Unitarians, and as to the application of the charity for Unitarian purposes, the answers were replied to, and evidence was entered into in support of the information.

I. For the purpose of showing that Lady Hewley was a Trinitarian, and believed in the divinity of the person of our Saviour and in the doctrines of the Atonement and Original Sin, as those doctrines are commonly received.

Official extracts from the will of Sir John Hewley and the will of Lady Hewley (in part set forth in the information) were proved and produced as exhibits (A and B) in the cause, and a tenth edition of Mr. Bowles' Catechism, printed and published at York, and the reprint of the same Catechism in Calamy's continuation were also proved and [21] produced as exhibits (U. and V.), and several Dissenting ministers of great eminence were produced as witnesses and examined.

In order to prove that Mr. Bowles's Catechism is a Trinitarian Catechism, amongst other witnesses John Pye Smith, D.D., Divinity Tutor in the Protestant Dissenting College at Homerton, was examined, and deposed as follows: That Mr. Bowles's Catechism is undoubtedly a Trinitarian Catechism, but that owing to the disuse of the said Catechism, he cannot say how the same is treated and accepted by any classes or denominations of Dissenters. He verily believed, however, and had no doubt, the said Catechism would be treated by them generally as a Trinitarian Catechism. That with reference to the doctrine and religious belief of Mr. Bowles, he was enabled, from his knowledge of the said Catechism, to speak positively that Mr. Bowles was a Trinitarian.

And the Reverend James Bennett, D.D., formerly Professor of Theology and the Oriental Languages in the Independent College, Rotherham, was examined on the same point, and deposed, that Bowles's Catechism is a Trinitarian Catechism, and would be so regarded by any class or denomination of Dissenters by whom it was known; for although the doctrine of the Trinity is not enlarged upon in it, yet the whole strain and spirit of it is decidedly Trinitarian, and would be approved by the most decided Trinitarian, while Unitarians would themselves consider it to be decidedly Trinitarian, and would not willingly employ such a formula for the instruction of their youth.

The answers in Mr. Bowles's Catechism (the exhibit U. and V.) throughout accompanied with texts from Scripture. The Catechism commences as follows:

A PLAIN AND SHORT CATECHISM.

"I have fed you with milk, and not with meat." 1 Cor. iii. 2.—"Ye have need that one teach you again which be the first principles of the oracles of God." Heb. v. 12.	
"*Q.* Who made you?	Acts xvii. 24, 25, 26.
"*A.* God, the Creator of Heaven and Earth.	Gen. i. 1.
"*Q.* To what end did he make you?	
"*A.* He made me and all things for his glory."	Prov. xvi. 4.

This Catechism contains amongst other questions and answers supported by texts of Scripture, the following:

"*Q.* In what condition is the posterity of our first parents "born?	
"*A.* In a sinful and miserable condition.	Rom. v. 17, 18, 19, and iii. 23.
"*Q.* Wast thou born in that condition?	
"*A.* Yes, I was conceived in sin, and am by nature a child of wrath as well as others.	Psalm li. 5. Ephes. ii. 3.

" *Q.* Hath thy life been better than thy birth?

" *A.* No, I have added sin to sin, and made myself above measure sinful. — Rom. iii. 10. Col. i. 21.

" *Q.* What if thou shouldest die in the condition thou wast born and bred in?

" *A.* I should perish everlastingly. — John iii. 3. 2 Thess. i. 8.

" *Q.* Is there no way to get out of this sinful and miserable estate?

" *A.* Yes. — 2 Tim. i. 9, 10.

" *Q.* Is it to be done by any power or righteousness of thy own?

" *A.* No; but God in his rich mercy hath appointed a way. — Titus iii. 4. 5.

" *Q.* What way hath God appointed?

" *A.* Only by Jesus Christ. — John xiv. 6. Acts iv. 2.

" *Q.* What is Jesus Christ?

" *A.* The Son of God manifest in the flesh. — Gal. iv. 4. 1 Tim. iii. 16.

" *Q.* What hath Jesus Christ done for man?

" *A.* He hath laid down his life for our redemption. — Mat. xx. 28. Col. i. 14.

" *Q.* What further benefit have we by him?

" *A.* Life and salvation. — John vi. 27, 48. Heb. v. 9.

[22] " *Q.* Shall all men partake of this redemption and salvation?

" *A.* No, there are many who perish notwithstanding. — Matt. vii. 13, 14. Phil. iii. 18.

" *Q.* By what means may a sinner obtain a part in this redemption?

" *A.* By faith in Christ. — Eph. ii. 8. John iii. 16.

" *Q.* What is it to believe?

" *A.* To rely on Jesus Christ, and him alone, for pardon and salvation, according to the Gospel. — John iii. 36. Acts xvi. 31. Isaiah l. 10 John v. 44.

" *Q.* Why hath God appointed faith to this excellent use?

" *A.* Because faith gives him what he looks for, the whole glory of our salvation. — Ephes. ii. 8, 9.

" *Q.* How is faith wrought in the soul?

" *A.* By the Word and Spirit of God. — Rom. x. 14, 17. 2 Cor. iii. 6. John xvi. 9, 10.

" *Q.* What call you the Word of God?

" *A.* The Holy Scriptures, the Old and Tew Testament. — Ephes. ii. 20.

" *Q.* In what order doth God work faith by the Word?

" *A.* First he shews men their sins, and then their Saviour. — Acts ii. 37. John xvi. 9.

" *Q.* Why doth he observe this order?

" *A.* That Christ may be the more precious to the soul. — 1 Peter ii. 7. Luke vii. 47.

" *Q.* How doth faith work love?

" *A.* It lays hold upon the infinite love of Christ, and works a mutual love in us. — 1 John iv. 19. Luke vii. 47.

" *Q.* Are not the Ten Commandments the Commandments of Christ?

" *A.* Yes, they are a special part of God's Word, which is a rule of life. — Psalm xix. 7. Matt. v. 17.

" *Q.* What are the Sacraments which Christ hath left to his Church?

" *A.* Two, Baptism, and the Supper of the Lord.

octavo, in conjunction with the late Dr. Bogue, deponent
e presumed to be conversant with the religious belief of the
Protestant Dissenters. That the word or term Presbyterian
ime referred to, was commonly used as the name or description
s or denomination of English Protestant Dissenters, and they
large and influential a body as to give a name to all Dissenters,
class is well known to have been most decidedly Trinitarian.
differed from the other class, in maintaining the government of
ch by a Presbytery or Court of Elders, while the Independents
regationalists, who came nearest to them, maintained the com-
of each church or congregation to manage its own affairs.
e Presbyterians differed from the Baptists, because the latter
he validity of infant baptism, and contended for the exclusive
y of immersion; but the Presbyterians, and Independents or
ationalists, were alike Trinitarian in doctrine, and agreed in
aptism by effusion or sprinkling. That the English Pres-
Dissenters did, at and about the time of the foundation of
ewley's charities, profess faith in God the Father, and in Jesus
is eternal Son, the true God, and in the Holy Spirit, one God
or evermore: and that, so far from being deniers of the doc-
the blessed Trinity, as it is declared in the Articles of Reli-
ould have been considered a gross calumny to call one who de-
doctrine of the Trinity a Presbyterian, and the Presbyterians
mselves would have protested against it, as slanderous and in-
o the reputation of that body; nor would the Presbyterian
at the time of Dame Sarah Hewley have consented to ordain
ork of the ministry any man who denied the doctrine of the
s set forth in the Articles of Religion. That the Heads of
ent assented to by the united ministers, formerly called Pres-
and Congregational, and printed in the year 1691, demon-
eir agreement in doctrines, as they agree to take the doctrinal
those commonly called the Articles of the Church of England,
onfessions or Catechisms, shorter or larger, of the Assembly
ninster, or the Confession agreed on by the Independents at
y, as their common confession of faith or standard of doc-
bile, in the former part of those Heads of Agreement, they
eir differences on church government and agree to one com-
.

Heads of Agreement were also referred to by Dr. John Pye
his evidence; and the pamphlet entitled Heads of Agreement
to by the united ministers in and about London, formerly
esbyterian and Congregational, printed in London 1691, was
l in the cause as an exhibit.

reface to these Heads of Agreement states, that in all sub-
they (the Presbyterians and Independents) were fully of one
d concludes with the following passage:

agreement is already assented to by above four score mini-
l the preface approved of."

ighth Head of Agreement is entitled "Of a Confession of
nd is in the following words:

o what appertains to soundness of judgment in matters of
re esteem it sufficient that a Church acknowledge the Scrip-

published by the Reverend Richard Slate, principally from the manuscript of the said Oliver Heywood. That of Richard Stretton there is a memoir in the third volume of Wilson's History of Dissenting Churches in London, and that they (Mr. Bowles and Richard Stretton) are severally recorded as having been Dissenters of note. That Dr. Coulton is mentioned in the said life of Oliver Heywood as a Dissenting minister of note.

The Reverend Thomas Scales deposed, that he believed that Lady Hewley, Mr. Bowles, Dr. Coulton, the Reverend Mr. Hotham, Richard Stretton, Nathaniel Gould, Timothy Hodgson, Martin Hotham, and William Hotham, were all Dissenters from the Established Church, and that he believed that Timothy Hodgson, the Reverend Mr. Hotham, and Nathaniel Gould, were of the Congregational class, and that the rest were of the class called Presbyterians, and that they were Trinitarians in their belief, and so considered and reputed. And in addition to the literary works before mentioned, the Reverend Thomas Scales deposed, that the names of Sir John Hewley, Lady Hewley, Dr. Coulton, Richard Stretton, and Timothy Hodgson, are also mentioned in the Diary and Correspondence of Ralph Thoresby, esquire. That Mr. Bowles is also mentioned in the Life and Times of Richard Baxter, and in a work of Elkanah Wales, entitled "Mount Ebal levelled, or Redemption from the Curse;" and that he is in the said publication mentioned as a Dissenter of note. That Lady Hewley and Dr. Coulton are also mentioned as Dissenters of note in the Life and Times of Dr. Calamy, by J. J. Rutt. That Nathaniel Gould, afterwards Sir Nathaniel Gould, knight, is mentioned in the works of Dr. Isaac Watts, and in Walter Wilson's History of Dissenting Churches, as a Dissenter of note. That though he had read no memoir of the Reverend Mr. Hotham, yet, from an authentic manuscript which deponent had seen, and which came into his hands with reference to an intended history, by deponent, of Yorkshire Nonconformists, deponent had no doubt that the Reverend Mr. Hotham was educated at the academy over which the Reverend Timothy Jollie, an eminent minister of the Congregational class of Dissenters, presided; and that, from the said different publications, deponent was enabled to state, that the said several persons were Trinitarians. And as to Dr. Coulton, deponent would refer to the will of the said Dr. Coulton, whose introductory sentences are most decidedly Trinitarian.

And the same witness stated, that he had learnt from memoirs and narratives which had come under his own consideration, more particularly in the capacity of historian as aforesaid, that the said Saint Saviour-gate Meeting-house or Chapel was erected in 1692 for the said Dr. Coulton, who was a Nonconformist, and that the said Meeting-house is reputed to have been endowed by Lady Hewley, but to what extent he was not able to say.

An Office copy of the registry of this Chapel under the Act of Toleration, on the 28th April 1693, was proved, and produced as an exhibit in the cause. (C.)

An Office copy of the will of Dr. Coulton, referred to by this witness, was also produced as an exhibit in this cause, being the exhibit (B 4.)

[24] Dr. Coulton's will is dated 18th June 1792, and begins with the

the Unitarian denomination, he having been brought up among them and well knowing many of them, and having had personal acquaintance with several of them then deceased as well as others still living.

VI. For the purpose of proving that the Appellants, the Reverend Charles Wellbeloved and John Kenrick, and the other Appellants who professed to have the same religious belief as them, are Unitarians.

The same witnesses were examined.

And in particular, the Reverend John Grundy, an Unitarian minister, was examined, who deposed, that he is personally acquainted with the Reverend Charles Wellbeloved and the Reverend John Kenrick, and that they are commonly called, and considered, and reputed to be Unitarian ministers or preachers. That the Appellants, Samuel Shore the younger, Offley Shore, and Daniel Gaskell, are all Dissenters from the Established Church, commonly called Unitarians or Unitarian Christians, and that deponent is accustomed to call them Unitarians and to speak of them as such. That there is no other word, appellation, or epithet which he is wont or able to make use of or employ, to express the religious belief and sentiments that he believed or supposed to be held or professed by the said parties, saving said words, Unitarian or Unitarians, or the said words, Unitarian Christian or Unitarian Christians. That he is not accustomed or wont to use or employ the word Presbyterian or Presbyterians, or the words Presbyterian Dissenters or Dissenter, for the purpose of expressing what he believed or supposed to be the religious belief or sentiment of, or professed by the said Appellants first named; because that word would not express their religious belief or sentiments, but is what deponent considered the legal term by which alone the Unitarians are acknowledged.

VII. In order to prove that the Unitarians are now an established class or denomination of Dissenters from the Established Church, and in order to show what is the peculiar doctrine held and promulgated by the said class of Dissenters in general, and by the said Reverend Charles Wellbeloved and John Kenrick in particular.

The same witnesses were examined, and some of the annual printed reports of the British and Foreign Unitarian Association, and some of the books and tracts after-mentioned, circulated by the said Association, and some of the sermons printed and published by the Appellants, the Reverend Charles Wellbeloved and the Reverend John Kenrick, respectively, were proved as exhibits, or were produced in the cause.

[28] And in particular, the Unitarian minister, the Reverend John Grundy, was examined, and deposed, that there is commonly reputed and believed to be a class, sect, association, or denomination of Protestant Dissenters from the Established Church, who are commonly called Unitarians or Unitarian Christians, and that there are chapels or meeting-houses which are commonly called or reputed to be Unitarian chapels or Unitarian meeting-houses. That many of the mini-

sters, and preachers, and members of congregations belonging to such class of Dissenters, frequenting such chapels or meeting-houses, call themselves, and are commonly called and reputed to be Unitarians or Unitarian Christians. That there is another term, name, or epithet, in common use among Unitarians, namely, the term Presbyterian, for the purpose of distinguishing such class of Dissenters, and their chapels or meeting-houses, from the other classes of Dissenters from the Established Church and from their chapels and meeting-houses. That in the counties of Lancaster and Chester the Unitarian ministers meet annually, by a circular issued to them by their Secretary, one of their ministers, under the name of "Ministers of the Presbyterian denomination." Not that deponent considers the term Presbyterian strictly applicable to himself and ministers of the Unitarian class, for it is not, but because by that epithet they are, he would say, legally known. That there is an association denominated the "British and Foreign Unitarian Association." That he is a member of such Association, and that the Appellants, Samuel Shore the younger, Varley Bealby, the Reverend John Kenrick, and the Reverend Charles Wellbeloved, are also members thereof. That the British and Foreign Unitarian Association is formed for the promotion of the principles of Unitarian Christianity, and that the leading or principal object of the said Association is, the promotion of Unitarian worship in Great Britain and abroad, by assisting poor congregations, and sending out and giving assistance to missionary preachers. That he is acquainted with the principles of Unitarian Christianity, and with the nature and form of what is meant by the words Unitarian worship. That the principles of Unitarian Christianity are at variance with, or opposed to the principles of Trinitarian Christianity or of Christians who profess faith in God the Father, and in Jesus Christ his eternal Son, the true God, and in the Holy Spirit, one God blessed for evermore, and who receive and believe the doctrine of the blessed Trinity as it is declared by the Articles of Religion. That the principles of Unitarian Christianity differ from, and are at variance with the principles of Trinitarian Christianity, upon those articles which relate to the division of the one God into three persons, and the doctrine of original sin, justification, free-will, works before justification, predestination, and election, of obtaining eternal salvation only by the name of Christ, and of the one oblation of Christ finished upon the cross; all which articles are held and believed to be Scriptural by Trinitarian Christians, but are rejected as unscriptural by Unitarian Christians. That Unitarian worship does differ from, is opposed to, and is at variance with Trinitarian worship, Unitarians strictly confining their worship to God the Father. That it is one of the leading objects of the British and Foreign Unitarian Association, to publish and distribute tracts, controversial and practical, in a cheap form, setting forth the belief and doctrines of Unitarians or of Unitarian Christianity, and that the said Association annually prints, and publishes, and distributes reports of its proceedings, which reports contain a catalogue of the books and tracts so printed, published, and distributed. That the principles or doctrines of Unitarian Christianity are set forth in some of the said tracts, particularly in "Aspland's Religious Belief of Unitarian Christianity truly stated," "Carpenter's Unitarianism the Doctrine of the Gospel,"

"Christie's Discourses on the Divine Unity," "Questions to Trinitarians," and "The Unitarian Creed."

The Unitarian Creed, referred to by this witness, was one of the exhibits (DD) proved in the cause.

Samuel Duckinfield Darbishire, one of the Secretaries to the Manchester College, York, was examined, and deposed, that he had looked on the exhibit marked (BB), which purported to be, and is, the sixth report of the said Association (the British and Foreign Unitarian [29] Association), and was, or had been distributed as such. That the said Report contained a catalogue of the tracts published by the said Association. That he believes that the principles or doctrines of Unitarian Christianity are set forth in some of the tracts mentioned in the said catalogue. *viz.* in "Dr. Carpenter's Unitarianism the Doctrine of the Gospel," "The New Testament in an improved version, upon "the basis of Archbishop Newcome's new translation, with a correct-"ed text, and notes critical and explanatory, the fourth edition, cor-"rected to Griesbach's last text, with additional notes." "The Reverend Mr. Robberds' Sermon on Christ one with God," and "Yates' Vindication of Unitarianism;" besides others, to which Deponent does not particularly speak.

The book called "the New Testament in an improved Version," referred to by this witness, stands at the head of the catalogue of books contained in the exhibit (BB), the sixth report of the British and Foreign Unitarian Association.

The fourth edition, referred to by the witness, was produced in Court before his Honour the Vice-Chancellor and commented upon by Counsel. An objection, however, was taken on the part of the Appellants, that though referred to by the witness it had not been proved as an exhibit, and it was not further pressed as evidence on that day. But on a subsequent day, the Counsel for the Appellant still insisting, that although it had been produced and commented on, it was not evidence, the Vice-Chancellor declared, that the book being described in the catalogue under the terms of "the New Testament in an improved Version," he considered it of course, that the reference to the book empowered the Court to look at the book; and the Counsel for the Appellants still pressing the objection, the Vice-Chancellor said, Mr. Wellbeloved appeared to him to be a subscriber to a society which professed to publish the following books, and it appeared to him that he might look at the books, for the purpose of seeing what those books were which Mr. Wellbeloved thought it right, as a subscriber, to have published. And the Vice-Chancellor, in his judgment, accordingly commented upon some of the perversions of the received texts of Scripture contained in the book called "the New Testament in an improved Version;" and on the re-hearing before Lord Chancellor Lyndhurst, on the appeal of the said Appellants against the judgment of the Vice-Chancellor, after mentioned, the fourth edition of the book called "the New Testament in an improved Version" was produced as evidence and commented upon by Counsel.

In this fourth edition of the book called "the New Testament in an improved Version" referred to by the said witness, Samuel Duckinfield Darbishire, as setting forth the principles and doctrines of "Unitarian Christianity, the first chapter of the Gospel according to St. Matthew, from the commencement of the seventeenth verse to the end of the said chapter, and the whole of the second chapter of the said Gospel, are

printed in italics, and the following note is annexed: "The remainder "of this chapter, and the whole of the second, are printed in italics, as "an intimation that they are of doubtful authority." The Gospel according to St. Luke is treated in the same way. From the fifth verse of the first chapter to the end of the second chapter is printed in italics, and a similar note annexed; and throughout this version divers of those texts in the received version, which are cited in Mr. Bowles's Catechism, and which are commonly relied upon in support of the doctrines of the divinity of the person of Christ, or the Atonement and Original Sin, are altered, for the purpose of attempting to accommodate them to the Unitarian belief.

And, in particular, the first eight, and the two last verses of the first chapter of St. Paul's Epistle to the Hebrews, is rendered in the following different manners in the Received Version, and in the book called "the New Testament in an improved Version."

[30] "*The Epistle of Paul the Apostle to* "*the Hebrews.*

Received Version.

"CHAP. I.

"1. God, who at sundry times and in "divers manners, spake in time past unto "the fathers by the prophets,

"2. Hath in these last days spoken "unto us by *his* Son, whom he hath ap-"pointed heir of all things, by whom "also he made the worlds;

"3. Who being the brightness of his "glory, and the express image of his "person, and upholding all things by the "word of his power, when he had by "himself purged our sins, sat down on "the right hand of the Majesty on high;

"4. Being made so much better than "the angels, as he hath by inheritance "obtained a more excellent name than "they.

"5. For unto which of the angels said "he at any time, Thou art my Son, this "day I have begotten thee? And again: "I will be to him a Father, and he shall "be to me a Son?

"6. And again, when he bringeth in "the first-begotten into the world, he "saith: And let all the angels of God "worship him.

"7. And of the angels he saith: "Who maketh his angels spirits, and his "ministers a flame of fire.

"8. But unto the Son *he saith*: Thy "throne, O God, is for ever and ever: a "sceptre of righteousness *is* the sceptre "of thy kingdom.

"13. But to which of the angels said "he at any time, Sit on my right hand "until I make thine enemies thy foot-"stool?

"14. Are they not all ministering spi-"rits, sent forth to minister for them who "shall be heirs of salvation?"

"*The Epistle to the Hebrews.*

Improved Version.

"CHAP. I.

"1. God, who in several parts and in "several manners formerly spake to *our* "fathers by the prophets,

"2. In the last of these days hath "spoken to us by *his* Son, whom he hath "appointed heir of all things, for whom "also he constituted the ages;

"3. Who being a ray of his brightness, "and an image of his perfections, and "ruling all things by his powerful word, "when he had by himself made a clean-"sing of (our sins), sat down on the right "hand of the Majesty on high;

"4. Having been made so much "greater than those messengers, as he "hath obtained a more excellent name "than they.

"5. For to which of those messengers "spake *God* at any time, 'Thou art my "Son, this day I have adopted thee?' "And again: 'I will be to him a Father, "and he shall be to me a Son?'

"6. And when *God* bringeth again "the first-born into the world, he saith: "'And let all the messengers of God "pay homage to him.'

"7. And of these messengers *the* "*Scripture saith*: 'Who maketh the "winds his messengers, and flames of "lightning his ministers.'

"8. But to the Son *he saith*: 'God is "thy throne for ever and ever: a sceptre "of rectitude *is* the sceptre of thy king-"dom.'

"13. But to which of those messen-"gers said he at any time: 'Sit thou on "my right hand until I make thine ene-"mies thy footstool?'

"14. Are they not all servants, sent "forth to serve the future heirs of sal-"vation?"

At the conclusion of this Epistle, the book called "the New Testament on an improved Version" adds a note, which is in part in the following words:

"The Epistle to the Hebrews is the first of those books which are "distinguished by Eusebius as having been disputed in the primitive "ages of Christianity, and which therefore are not to be received as "of equal authority with the rest.* Origen says, that no one can tell "who was the author of it. It has been ascribed to Paul, to Barna-"bas, to Luke, and to Timothy; but if Origen, the most learned and in-"quisitive writer in the third century, could not discover the author, it "is in vain for us to attempt it, and we must be content to remain in "ignorance."

Part of Bowles' Catechism. [31]	*Texts referred to in the Margin of Bowles' Catechism, taken from the Received Version.*	*Parallel Texts, taken from the Improved Version.*
Q. Who is Jesus Christ? *A.* The Son of God, manifest in the flesh.	GAL. iv. 4.—But when the fulness of the time was come, God sent forth his Son, made of a woman, made under the law.	GAL. iv. 4.—But when the fulness of the time was come, God sent forth his Son, born of a woman, born under the law.
	1st TIM. iii. 16.—And without controversy great is the mystery of godliness. God was manifest in the flesh, justified in the Spirit, seen of angels, preached unto the Gentiles, believed on in the world, received up into glory.	1st TIM. iii. 16.—And without controversy the mystery of godliness is great. He who was manifested in the flesh was justified by the Spirit, seen by messengers, preached to the Gentiles, believed on in the world, received in glory.
Q. What hath Jesus Christ done for man? *A.* He hath laid down his life for our redemption.	COL. i. 14.—In whom we have redemption *through his blood*, even the forgiveness of our sins.	COL. i. 14.—By whom we have redemption, even the forgiveness of our sins.
Q. What is Baptism? *A.* It is dipping, or sprinkling with water, in the name of the Father, of the Son, and of the Holy Ghost.	MATT. xxviii. 19.—Go ye therefore and teach all nations, baptizing them *in* the name of the Father, and of the Son, and of the Holy Ghost.	MATT. xxviii. 19.—Go ye and make disciples of all nations, baptizing them *into* the name of the Father, and of the Son, and of the Holy Spirit.

* The passage from Origen (which is preserved by Eusebius) is as follows: "If I were to give my opinion, I should say the phraseology and the texture belong to some one relating the Apostle's sentiments, and as it were commenting on the words of his master. If any church, therefore, hold this to be an epistle of Paul, let it receive commendation on account of this; for it is not without reason that the ancients have handed it down (παραδιδόασι, have had a tradition) as being of Paul. Who wrote the Epistle (γράψας, penned it, or committed it to writing) God (only) knows with certainty; but the report which has reached us is that some affirm it to be written by Clement, bishop of Rome; and some by Luke, who wrote the Gospel and the Acts." Euseb. Hist. Ecc. vi. 25.—Lard. iv. p. 235.

sters, and preachers, and members of congregations belonging to such class of Dissenters, frequenting such chapels or meeting-houses, call themselves, and are commonly called and reputed to be Unitarians or Unitarian Christians. That there is another term, name, or epithet, in common use among Unitarians, namely, the term Presbyterian, for the purpose of distinguishing such class of Dissenters, and their chapels or meeting-houses, from the other classes of Dissenters from the Established Church and from their chapels and meeting-houses. That in the counties of Lancaster and Chester the Unitarian ministers meet annually, by a circular issued to them by their Secretary, one of their ministers, under the name of "Ministers of the Presbyterian denomination." Not that deponent considers the term Presbyterian strictly applicable to himself and ministers of the Unitarian class, for it is not, but because by that epithet they are, he would say, legally known. That there is an association denominated the "British and Foreign Unitarian Association." That he is a member of such Association, and that the Appellants, Samuel Shore the younger, Varley Bealby, the Reverend John Kenrick, and the Reverend Charles Wellbeloved, are also members thereof. That the British and Foreign Unitarian Association is formed for the promotion of the principles of Unitarian Christianity, and that the leading or principal object of the said Association is, the promotion of Unitarian worship in Great Britain and abroad, by assisting poor congregations, and sending out and giving assistance to missionary preachers. That he is acquainted with the principles of Unitarian Christianity, and with the nature and form of what is meant by the words Unitarian worship. That the principles of Unitarian Christianity are at variance with, or opposed to the principles of Trinitarian Christianity or of Christians who profess faith in God the Father, and in Jesus Christ his eternal Son, the true God, and in the Holy Spirit, one God blessed for evermore, and who receive and believe the doctrine of the blessed Trinity as it is declared by the Articles of Religion. That the principles of Unitarian Christianity differ from, and are at variance with the principles of Trinitarian Christianity, upon those articles which relate to the division of the one God into three persons, and the doctrine of original sin, justification, free-will, works before justification, predestination, and election, of obtaining eternal salvation only by the name of Christ, and of the one oblation of Christ finished upon the cross; all which articles are held and believed to be Scriptural by Trinitarian Christians, but are rejected as unscriptural by Unitarian Christians. That Unitarian worship does differ from, is opposed to, and is at variance with Trinitarian worship, Unitarians strictly confining their worship to God the Father. That it is one of the leading objects of the British and Foreign Unitarian Association, to publish and distribute tracts, controversial and practical, in a cheap form, setting forth the belief and doctrines of Unitarians or of Unitarian Christianity, and that the said Association annually prints, and publishes, and distributes reports of its proceedings, which reports contain a catalogue of the books and tracts so printed, published, and distributed. That the principles or doctrines of Unitarian Christianity are set forth in some of the said tracts, particularly in "Aspland's Religious Belief of Unitarian Christianity truly stated," "Carpenter's Unitarianism the Doctrine of the Gospel,"

"Christie's Discourses on the Divine Unity," "Questions to Trinitarians," and "The Unitarian Creed."

The Unitarian Creed, referred to by this witness, was one of the exhibits (DD) proved in the cause.

Samuel Duckinfield Darbishire, one of the Secretaries to the Manchester College, York, was examined, and deposed, that he had looked on the exhibit marked (BB), which purported to be, and is, the sixth report of the said Association (the British and Foreign Unitarian [29] Association), and was, or had been distributed as such. That the said Report contained a catalogue of the tracts published by the said Association. That he believes that the principles or doctrines of Unitarian Christianity are set forth in some of the tracts mentioned in the said catalogue, *viz.* in "Dr. Carpenter's Unitarianism the Doctrine of the Gospel," "The New Testament in an improved version, upon "the basis of Archbishop Newcome's new translation, with a correct-"ed text, and notes critical and explanatory, the fourth edition, cor-"rected to Griesbach's last text, with additional notes." "The Reverend Mr. Robberds' Sermon on Christ one with God," and "Yates' Vindication of Unitarianism;" besides others, to which Deponent does not particularly speak.

The book called "the New Testament in an improved Version," referred to by this witness, stands at the head of the catalogue of books contained in the exhibit (BB), the sixth report of the British and Foreign Unitarian Association.

The fourth edition, referred to by the witness, was produced in Court before his Honour the Vice-Chancellor and commented upon by Counsel. An objection, however, was taken on the part of the Appellants, that though referred to by the witness it had not been proved as an exhibit, and it was not further pressed as evidence on that day. But on a subsequent day, the Counsel for the Appellant still insisting, that although it had been produced and commented on, it was not evidence, the Vice-Chancellor declared, that the book being described in the catalogue under the terms of "the New Testament in an improved Version," he considered it of course, that the reference to the book empowered the Court to look at the book; and the Counsel for the Appellants still pressing the objection, the Vice-Chancellor said, Mr. Wellbeloved appeared to him to be a subscriber to a society which professed to publish the following books, and it appeared to him that he might look at the books, for the purpose of seeing what those books were which Mr. Wellbeloved thought it right, as a subscriber, to have published. And the Vice-Chancellor, in his judgment, accordingly commented upon some of the perversions of the received texts of Scripture contained in the book called "the New Testament in an improved Version;" and on the re-hearing before Lord Chancellor Lyndhurst, on the appeal of the said Appellants against the judgment of the Vice-Chancellor, after mentioned, the fourth edition of the book called "the New Testament in an improved Version" was produced as evidence and commented upon by Counsel.

In this fourth edition of the book called "the New Testament in an improved Version" referred to by the said witness, Samuel Duckinfield Darbishire, as setting forth the principles and doctrines of "Unitarian Christianity, the first chapter of the Gospel according to St. Matthew, from the commencement of the seventeenth verse to the end of the said chapter, and the whole of the second chapter of the said Gospel, are

printed in italics, and the following note is annexed: "The remainder "of this chapter, and the whole of the second, are printed in italics, as "an intimation that they are of doubtful authority." The Gospel according to St. Luke is treated in the same way. From the fifth verse of the first chapter to the end of the second chapter is printed in italics, and a similar note annexed; and throughout this version divers of those texts in the received version, which are cited in Mr. Bowles's Catechism, and which are commonly relied upon in support of the doctrines of the divinity of the person of Christ, or the Atonement and Original Sin, are altered, for the purpose of attempting to accommodate them to the Unitarian belief.

And, in particular, the first eight, and the two last verses of the first chapter of St. Paul's Epistle to the Hebrews, is rendered in the following different manners in the Received Version, and in the book called "the New Testament in an improved Version."

[30] "*The Epistle of Paul the Apostle to* "*the Hebrews.*
Received Version.

"CHAP. I.

"1. God, who at sundry times and in "divers manners, spake in time past unto "the fathers by the prophets,

"2. Hath in these last days spoken "unto us by *his* Son, whom he hath ap-"pointed heir of all things, by whom "also he made the worlds;

"3. Who being the brightness of his "glory, and the express image of his "person, and upholding all things by the "word of his power, when he had by "himself purged our sins, sat down on "the right hand of the Majesty on high;

"4. Being made so much better than "the angels, as he hath by inheritance "obtained a more excellent name than "they.

"5. For unto which of the angels said "he at any time, Thou art my Son, this "day I have begotten thee? And again: "I will be to him a Father, and he shall "be to me a Son?

"6. And again, when he bringeth in "the first-begotten into the world, he "saith: And let all the angels of God "worship him.

"7. And of the angels he saith: "Who maketh his angels spirits, and his "ministers a flame of fire.

"8. But unto the Son *he saith*: Thy "throne, O God, is for ever and ever: a "sceptre of righteousness *is* the sceptre "of thy kingdom.

"13. But to which of the angels said "he at any time, Sit on my right hand "until I make thine enemies thy foot-"stool?

"14. Are they not all ministering spi-"rits, sent forth to minister for them who "shall be heirs of salvation?"

"*The Epistle to the Hebrews.*
Improved Version.

"CHAP. I.

"1. God, who in several parts and in "several manners formerly spake to *our* "fathers by the prophets,

"2. In the last of these days hath "spoken to us by *his* Son, whom he hath "appointed heir of all things, for whom "also he constituted the ages;

"3. Who being a ray of his brightness, "and an image of his perfections, and "ruling all things by his powerful word, "when he had by himself made a clean-"sing of (our sins), sat down on the right "hand of the Majesty on high;

"4. Having been made so much "greater than those messengers, as he "hath obtained a more excellent name "than they.

"5. For to which of those messengers "spake *God* at any time, 'Thou art my "Son, this day I have adopted thee?' "And again: 'I will be to him a Father, "and he shall be to me a Son?'

"6. And when *God* bringeth again "the first-born into the world, he saith: "'And let all the messengers of God "pay homage to him.'

"7. And of these messengers *the* "*Scripture saith*: 'Who maketh the "winds his messengers, and flames of "lightning his ministers.'

"8. But to the Son *he saith*: 'God is "thy throne for ever and ever: a sceptre "of rectitude *is* the sceptre of thy king-"dom.'

"13. But to which of those messen-"gers said he at any time: 'Sit thou on "my right hand until I make thine ene-"mies thy footstool?'

"14. Are they not all servants, sent "forth to serve the future heirs of sal-"vation?"

" Reverend Sir:

" Not doubting that you are convinced of the importance of pre-
" serving a succession of regularly educated ministers in our class
" of Dissenters, I take the liberty, in compliance with an order of a
" General Meeting of Trustees, of requesting that you will recommend
" the support of the institution now established at York, in a sermon
" to your congregation, and permit a collection to be made for that
" purpose. At the same time I beg leave to inform you, that at a
" meeting of Trustees held at Manchester, April 3rd 1805, it was re-
" solved, ' That all ministers who preach annual sermons for the
" ' benefit of this institution shall be considered as Trustees.'

" I am, Reverend Sir, with sincere respect, your affectionate
" brother and servant,
" CHARLES WELLBELOVED."

The second of these exhibits, marked (ZZ), is entitled: " The Report of the Manchester College, York, at the thirty-fifth Annual Meeting, August 3d 1821," and contains amongst other items: " Six Exhibitions to Students, of 20*l.* each, from the Trustees of Lady Hewley's Fund." The salary of the Appellant, the Reverend Charles Wellbeloved, as Theological Tutor, appears to be increased

to	£200	0	0			
And his fees for fifteen Divinity Students, five guineas each, amount to	78	15	0			
Making together				278	15	0
The Salary of the Appellant, the Reverend John Kenrick, as Classical Tutor, is continued at	100	0	0			
And his fees for fifteen Divinity Students, at three guineas each, amount to	47	5	0			
				147	5	0

In the list of Annual Subscribers for the year 1820–21, the names of the Appellants, Thomas Walker, Samuel Shore, jun., Offley Shore, Daniel Gaskell, Reverend Charles Wellbeloved, Varley Bealby, and Reverend John Kenrick, and of Samuel Shore, the elder, again appear.

In page 12 of this exhibit is contained a list of ministers, entitled, " A List of Dissenting Ministers who have received their Education in Manchester College since its removal to York in 1803."

The last of these exhibits is marked (AA), and is entitled,

" The REPORT of Manchester College, York, at the Forty-fifth Annual Meeting, March 1831." It contains, amongst others, the following statements and items.

" *Tutors.*

" Reverend Charles Wellbeloved, Theological Tutor and Principal.
" Reverend John Kenrick, M.A., Classical Tutor.
" Reverend William Hincks, T.C.S., Mathematical Tutor.

" *Officers for the Year* 1831.

[34] " Daniel Gaskell, Esq., Lupsett Hall, Yorkshire, President.

Q. What is the nature of this Sacrament? *A.* It represents and (through faith) seals the sprinkling of the blood of Christ and the washing of the Holy Ghost.	Acts xxii. 16.—And now why tarriest thou: arise, and be baptized, and wash away thy sins, *calling on the name of the Lord.* Titus iii. 5.—Not by works of *righteousness which we have done*, but according to his mercy He saved us, by washing of regeneration and *renewing of the Holy Ghost.* Acts viii. 37.—And Philip said, if thou believest with all thine heart, thou mayest: and he answered and said, I believe that Jesus Christ is the Son of God.	Acts xxii. 16.—And now why delayest thou: arise and be baptized, and wash away thy sins, *taking upon thyself His name.* Titus iii. 5.—Not by works of *justification which we did*, but according to his mercy, by the washing of regeneration and *the renovation of the Holy Spirit.* This text is altogether omitted, with the following note:—This verse is wanting in the Alese Ephr, and many other manuscripts and versions, and is probably a marginal note inserted by mistake into the text.
Q. What is the benefit of this Sacrament to a worthy receiver? *A.* It strengthens his faith, and confirms his love to Christ and all his members.	1 Cor. x. 16 and 17.—The cup of blessing which we bless, is it not *the communion of the blood of Christ:* the bread which we break, is it not *the communion of the body of Christ.* 17.—For we, being many, are one bread and one body, for we are *all partakers of that one bread.*	1 Cor. x. 16, 17.—The cup of blessing for which we give thanks, is it not *a participation in the blood of Christ?* the bread which we break, is it not *a participation of the body of Christ?* 17. For we, though many, are as one bread and one body, for we *all share one bread.*

Divers other Unitarian tracts and sermons were proved as exhibits and produced, and in particular, several of the printed and published sermons of the Appellants, the Reverend Charles Wellbeloved and John Kenrick; and especially, a sermon preached by the Appellant, the Reverend Charles Wellbeloved, being the exhibit marked (X), entitled, "Unitarians not guilty of denying the Lord that bought them," preached before the Association of Unitarian Christians residing in Hull, Thorn, Lincoln, and adjacent parts, at the chapel, Bowl-alley Lane, Hull, on Thursday, September 18th 1823, by Charles Wellbeloved; and which sermon contains the following passages:

"With the doctrines concerning the deity of Christ, we also reject, "as equally unscriptural, those which other Christian sects hold to be of "such vital importance relating to his office, and the design and con-"sequences of his death. We see nothing in the passages, either of "the Old or New Testament, to justify the doctrines which are gene-"rally deemed orthodox relating to original sin."

"But it will be said that we deny his Deity (that is the deity of "Christ): we refuse to acknowledge him as the second person of the "Godhead: we do not allow him to be one God with the father, co-"eternal and co-equal, or even God of God: we confess the man "Christ Jesus, but deny him as that incarnate suffering and dying "God, which he is believed to have been by all others who bear his "name. True, we do deny the Jesus of the Athanasian and the Nicene "[32] Creeds of the Liturgy and the Articles of the Established Church,

" of the Confessions of Faith adopted by almost all the churches " of Christendom."

And sermon by the Appellant, the Reverend John Kenrick, being the ex' .t (JJ), entitled " Obstacles to the Diffusion of Unitarianism " and the prospect of their Removal; a sermon preached before the " supporters of the British and Foreign Unitarian Association, at their " annual meeting, June 7th 1827, by John Kenrick, M.A.;" and containing the following passages:

" If others have established a distinction between those essential " articles of faith which cannot be rejected without perdition, and the " non-essentials on which men may differ, we at least gain little by " the relaxation, for I know of no Church which does not regard as " essentials those very articles which our name implies that we reject."

" We are convinced that no doctrines can ultimately prevail among " a people allowed to think and examine for themselves, which, like " transubstantiation, involve a sensible absurdity; or like the Trinity, " a metaphysical contradiction; or like the doctrine of Atonement, in " its genuine form, are utterly repugnant to what nature shews and " reason proves of the moral attributes of God. The surrender of " their understandings is a price which men will not long consent to " pay for the belief of any system of theology."

VIII. To prove the misapplication of Lady Hewley's charity.

The misapplication of the portion of Lady Hewley's charity, which is directed to be employed for exhibitions for or towards the education of young men designed for the ministry of Christ's Holy Gospel, was established, by showing that Manchester College, York, the establishment to which all the exhibitions had been given by the Appellants for many years, is an establishment supported by the Unitarian Dissenters, for the purpose of educating ministers of the Unitarian persuasion. And. for this purpose, three of the annual printed reports of that establishment were proved and produced as exhibits.

The first of these (the exhibit Z), is entitled "The Report of Man- " chester College, York, founded at Manchester February 22d 1786, " removed to York September 1st 1803; at the Thirty-second Annual " Meeting, August 7th 1818." This report contains the following statements and items:

" CASH ACCOUNT, from June 30th 1817 to June 30th 1818.

" *Receipts.—Benefactions for general purposes.*

	£.	s.	d.
" Amicus, Stockton, by the Reverend Charles Wellbeloved	4	0	0
" A friend to the Unitarian cause, by ditto	5	0	0
" John Pemberton Heywood, Esq. Wakefield (fourth benefaction.)	5	0	0

tional, and that the said college or establishment is not a proper or fitting college or school for the educating of a minister or preacher of deponent's denomination of Dissenters; for the other classes have colleges or schools for the education of their ministers, and the Manchester College at York is so notoriously an Unitarian college or school, that deponent's class of Dissenters would rather admit an uneducated minister, than receive one from the Manchester College, from which none but Unitarians would be expected to come. That the said Manchester College is in practice, and as now conducted, an establishment for the education of ministers of that class of Dissenters only called Unitarians. That it is for the preserving a succession of educated ministers of the class of Dissenters called Unitarian, and for them alone; for though deponent believes there is no test, and no creed is imposed on the students, yet the tutors being known to be Unitarians, and the ministers who were educated there being known to be of the same sentiments of religious belief, none but Unitarians would go to study for the ministry at Manchester College, and none but Unitarian congregations would receive a minister from thence.

The Reverend WILLIAM MANNING WALKER was also examined, and his depositions were in part in the following words. That he is a Dissenter from the Established Church, and of the class or denomination called Independents or Congregationalists. That he was brought up a Dissenter of Unitarian principles or belief, but for more than twenty years he has been, and is now, of Trinitarian principles. That he is acquainted with Manchester College now at York, having spent four years therein at Manchester as a student in theology, immediately prior to its removal from Manchester to York. That the reputation and common belief respecting the said college is, that it is not a proper college or school for the education of Dissenting ministers of all classes or denominations, but only for those called Unitarians. That he himself entered therein under the same impression, and should not have gone there but with a view of becoming an Unitarian minister. That he is a Dissenter from the Established Church, of the class or denomination called Congregational or Independent, and Trinitarian in sentiment, he having about the year 1803 been led, from an investigation [36] of the sacred Scriptures, to renounce Unitarian and embrace Trinitarian sentiments. That the said college is not a proper and fitting college or school for the education of a minister or preacher of deponent's persuasion or denomination of Dissenters, and that no person of Trinitarian sentiments would send his son to be educated there, unless he were indifferent about matters of religious belief, because the tutors who have presided over it, and do still preside over it, were and are reputedly Unitarians, and the whole course of theological instruction, during deponent's four years' residence in the college, was directed to the establishment of the students in Unitarian principles, and to the best of deponent's knowledge and belief, still continues to be so; and deponent knowing several Unitarian ministers educated in the said college since its removal to York, is enabled more confidently thus to state his belief. That he knows no person besides himself educated for the ministry therein, before or after his removal from the said college, who was not and is not an Unitarian. That the said Manchester

College, in practice and as now conducted, is an establishment for the education of ministers of the Unitarian class only, and one of the objects of the said establishment, in practice and as now conducted, is, there can be no doubt, the preserving a succession of regularly well-educated ministers of the Unitarian class only. That he hath looked upon and read the printed circular letter with the name Charles Wellbeloved affixed to it, contained in the book or pamphlet now produced and shown to deponent and marked with the letter Z (being the thirty-second report of the Manchester College, York), and that he has no doubt, by the words " ministers in our class of Dissenters," contained in the said printed letter, is meant, intended, and implied, the Unitarian Dissenters alone. That one reason for such belief is, that a similar letter was sent from Deponent's uncle, the Reverend George Walker, then president of the said college, at the time deponent was a student there, to the various Unitarian ministers throughout England, and to them only; and another reason deponent would assign for such his belief is, that upon the same page of the said printed pamphlet or book marked Z, at the foot of which the said letter with the name Charles Wellbeloved affixed to it appears, a list is given of the officers, deputy treasurers, committee, and auditors connected with the said Manchester College at York, which list contains only the names of some of the most influential Unitarians in various parts of England. That he believes the Manchester College at York to be a college or school for the education of Dissenting ministers, of the class of Dissenters commonly called Unitarians. That divers Unitarian ministers, namely, the Reverend Richard Astley, the Reverend T. C. Holland, the Reverend John Gooch Robberds, the Reverend John James Taylor, the Reverend Mr. Beard, and the Reverend J. W. Robberds, all Unitarian ministers, and some of them of some note, were educated at the said college. That he is personally acquainted with all the said Unitarian ministers except the last, whom he knows only by reputation. That, to the best of his knowledge, information, and belief, and he has no doubt of it, the said Manchester College at York is supported only by Dissenters, and by that class only commonly called Unitarians; for that it is generally regarded as a college for the education of ministers of that particular class only, and Dissenters of the other denominations, being Trinitarians, have seminaries or colleges for the education of ministers among themselves, supported by their own denomination, being Trinitarians; besides which deponent believes that Dissenters of the other denominations, being Trinitarian, would not receive into their pulpits a minister trained in the said college and continuing an Unitarian, and would therefore on no account contribute to the support of the said college. That he hath looked upon and read the list of Dissenting ministers set forth in page 12 of the printed book or pamphlet now produced and shown to deponent, marked with the letters ZZ, (being a list of Dissenting ministers who have received their education in Manchester College since its removal to York in 1803, contained in the thirty-fifth report of the Manchester College, York). That the names William Turner, jun., Joseph Hunter, Richard Astley, James Yates, John Gooch Robberds, Joseph Hutton, J. C. Holland, J. William [37] Morris, John James Taylor, and Arthur Dean, contained in the said list, are all known to deponent, either personally or by common reputation, to be Unitarian ministers. That he hath looked upon and

read the list of ministers and congregations set forth in page 14 of the printed report now produced and shown to deponent, marked with the letters (AA), (being the list of ministers who are Life-trustees in consequence of collections in their congregations subsequent to April 1805, contained in the forty-fifth report of the Manchester College, York,) and that the ministers and congregations severally known to deponent, or which deponent is able to set forth, are of that class of Dissenters called Unitarian; and deponent would select from that list, as personally known to himself, or known to himself by common reputation to be Unitarian ministers and Unitarian congregations, the following, *viz.* William Turner of Newcastle-on-Tyne, Edward Higginson of Derby, William Harrison of Blakeley, Nathaniel Phillips, D.D. of Sheffield, John Harrison of Kendal, Joe Hunter of Bath, John Grundy of Liverpool, J. Gooch Robberds of Manchester, John Row of Bristol, R. Scott of Portsmouth, Samuel Parker of Stockport, Arthur Dean of Stand, Lant Carpenter, L.L.D. of Bristol, James Yates of London, Joseph Hutton, L.L.D. of Leeds, Richard Astley, late of Gloster, now of Shrewsbury, William Lamport of Liverpool, John James Taylor of Manchester, J. W. Morris of Dean Row, R. Aspland of Hackney, and Joseph Kelly of Whitby.

The Unitarian minister, the Reverend John Grundy, was examined, and his depositions are in part in the following words. That he is acquainted with the Manchester College at York. That it is in high reputation as a college or school for the education of Dissenting ministers. That, as far as the fundamental rules of the said college are concerned, it is a proper school for the education of Dissenting ministers of all classes, there being no inculcation of any particular doctrine or tenet; but that, in the opinion of many, it may be considered as more proper for Unitarians than Trinitarians, the heads of the establishment being Unitarian. That he is a Dissenter from the Established Church, of the class called Unitarian, and that the said college is a proper and fitting college for the education of a minister of deponent's persuasion. That he hath not filled the office of President, or Vice-President, Public Examiner, or Secretary, Treasurer, or Deputy Treasurer of the Manchester College at York, but that he is a Trustee for life, and hath been one of the Committee of the said college. That the Committee of the said Manchester College annually makes a report by the Committee to the public, and that the said report is annually printed and distributed, and that he hath looked upon the exhibits marked (ZZ), and that they are respectively a report of the Manchester College at York for the years 1818 and 1821, made at the thirty-second and thirty-fifth annual meetings of the Committee, and that the annual reports published as aforesaid are commonly believed to be, and are circulated as the annual reports of the Manchester College. That the said Manchester College, in practice and as now conducted, is an establishment for the education of divinity students of the class of Dissenters called Unitarian, and that one of the objects of the said establishment, in practice and as now conducted, is the preserving a succession of regularly well-educated ministers of the Unitarian class of Dissenters in particular. That he hath looked upon and read the printed circular letter with the name Charles Wellbeloved affixed to it, contained in the exhibit (Z), and that by the words "ministers in our class of Dissenters," contained in the said printed letter,

he conceives to be meant Unitarian, or according to the legal term as aforesaid (in answer to a former interrogatory), Presbyterian Dissenting ministers. That the Manchester College at York is a college or school for the education of Dissenting ministers of the class commonly called Unitarians. That divers Unitarian, or reputed Unitarian ministers have been educated at the said college, and in particular those who are mentioned at page 12 of the exhibit (ZZ), deposed to in his answer to the twenty-seventh interrogatory, being forty in number; besides and in addition to which deponent would mention Mr. Kell, Mr. Shawcross, Mr. Beard, Mr. Wreford, Mr. Tagart, Mr. Haworth, Mr. Lee, Mr. Brook Aspland, Mr. Talbot, Mr. Martineau, Mr. Higgin-[38] son, Mr. Phillips, Mr. Gaskell, and some of them of note or fame, namely, Mr. Madge, Mr. Tagart, Mr. Martineau, Mr. Robberds, Mr. Mardon, Mr. James Yates, Mr. Beard, Mr. Brook Aspland, Mr. Higginson, Mr. John James Taylor, and Dr. Joseph Hutton. That the Manchester College at York is chiefly, if not altogether, supported by Dissenters of the class commonly called Unitarian. That he hath looked upon and read the list of Dissenting ministers set forth in page 12 of the exhibit (ZZ), and saith that they all whom he knows in the said list are, and all in the said list are reputed to be Unitarians; but deponent would except from his present statement the Reverend John Smethurst and John Haslam, who may still be Unitarians for anything deponent knows to the contrary, but both of these gentlemen having left England for America, deponent is unable to speak as to their present sentiments. Saith, that he hath looked upon and read the list of ministers and congregations set forth in page 14 of the exhibit marked (AA). That all the said ministers and congregations (deponent speaking as to many of them from personal knowledge, and as to all from common reputation) are Unitarian ministers and Unitarian congregations; except only that he cannot speak to the name of William Evans and his congregation at Tavistock (Abbey Chapel), deponent being unacquainted either with the said William Evans or his congregation.

The misapplication of that portion of Lady Hewley's charities which is directed by her to be paid yearly to poor and godly preachers for the time being of Christ's holy gospel, was established, by the admitted allowance of 80*l.* a year to the Appellant, the Reverend Charles Wellbeloved, the Theological Tutor and Principal of the Manchester College, York, and by the allowance of 12*l.* a year made to the Reverend John Ashworth, the minister of the Unitarian Chapel in Rossendale, Lancashire, in consequence of the Unitarian memorial in part set forth in the information, and stated by the answer of the Appellants now to be lost or not to have been preserved. The sending of this memorial, and that it was to the purport and effect set forth in the information, was established, by proving as an exhibit the Unitarian magazine called the Monthly Repository for May 1815 (being the exhibit OO), which contained a copy of the said memorial, and was published very shortly after the time of its being sent to the Trustees of Lady Hewley's charity. This exhibit was proved by examining the Reverend John Ashworth, by whom the said memorial was presented to the Trustees of Lady Hewley's charity.

tional, and that the said college or establishment is not a proper or fitting college or school for the educating of a minister or preacher of deponent's denomination of Dissenters; for the other classes have colleges or schools for the education of their ministers, and the Manchester College at York is so notoriously an Unitarian college or school, that deponent's class of Dissenters would rather admit an uneducated minister, than receive one from the Manchester College, from which none but Unitarians would be expected to come. That the said Manchester College is in practice, and as now conducted, an establishment for the education of ministers of that class of Dissenters only called Unitarians. That it is for the preserving a succession of educated ministers of the class of Dissenters called Unitarian, and for them alone; for though deponent believes there is no test, and no creed is imposed on the students, yet the tutors being known to be Unitarians, and the ministers who were educated there being known to be of the same sentiments of religious belief, none but Unitarians would go to study for the ministry at Manchester College, and none but Unitarian congregations would receive a minister from thence.

The Reverend WILLIAM MANNING WALKER was also examined, and his depositions were in part in the following words. That he is a Dissenter from the Established Church, and of the class or denomination called Independents or Congregationalists. That he was brought up a Dissenter of Unitarian principles or belief, but for more than twenty years he has been, and is now, of Trinitarian principles. That he is acquainted with Manchester College now at York, having spent four years therein at Manchester as a student in theology, immediately prior to its removal from Manchester to York. That the reputation and common belief respecting the said college is, that it is not a proper college or school for the education of Dissenting ministers of all classes or denominations, but only for those called Unitarians. That he himself entered therein under the same impression, and should not have gone there but with a view of becoming an Unitarian minister. That he is a Dissenter from the Established Church, of the class or denomination called Congregational or Independent, and Trinitarian in sentiment, he having about the year 1803 been led, from an investigation [36] of the sacred Scriptures, to renounce Unitarian and embrace Trinitarian sentiments. That the said college is not a proper and fitting college or school for the education of a minister or preacher of deponent's persuasion or denomination of Dissenters, and that no person of Trinitarian sentiments would send his son to be educated there, unless he were indifferent about matters of religious belief, because the tutors who have presided over it, and do still preside over it, were and are reputedly Unitarians, and the whole course of theological instruction, during deponent's four years' residence in the college, was directed to the establishment of the students in Unitarian principles, and to the best of deponent's knowledge and belief, still continues to be so; and deponent knowing several Unitarian ministers educated in the said college since its removal to York, is enabled more confidently thus to state his belief. That he knows no person besides himself educated for the ministry therein, before or after his removal from the said college, who was not and is not an Unitarian. That the said Manchester

"his Father. It struck us that, if the Father required a satisfaction to "his justice, the Son, if equal with him, must, for the same reason, "require one too; and then it gave us the idea, that there was one "God who was stern and inflexible—another, kind and generous, and "yet these are one and equal in perfection. These, with a whole heap "of inconsistencies which gather round this doctrine, caused us to "cast this ancient piece of orthodoxy to the moles and to the bats.

"We set about our work, continued to enquire after truth, and im-"mediately after this we relinquished the doctrine of the Divinity of "Christ. Indeed, the place at which we are now arrived is supposed "by our orthodox neighbours to be the mystery of iniquity.

"Gentlemen, we have heard of your liberality, and that, as the "Trustees of Lady Hewley's Fund, you have it in your power to be "kind to the needy. We have given you a very brief account of our "rise, progress, and present condition as a Church of God on Unita-"tarian principles. We pray you would consider the condition of our "worthy needy minister. We think it no flattery to say, that he has "been worthy a better treatment than we have been able to give him "or can give him; we have therefore, being beggars, made his and "our condition known to you. May the abundance of your liberality "abound to the relief of our poverty, to the encouragement and sup-"port of our worthy minister, and may the divine bounty cause your "fund to be enriched, that you may bless the families of many indi-"gent ministers.

(Signed) "JOHN LORD,
"JONATHAN RUDMAN, } Trustees."
"JAMES HOLT,

"Gentlemen:

"I do most cordially recommend the case of the people at New "Church, and their minister, my lately acquired but highly esteemed "friend, to your regard.

"Bury, May 6th 1815. "W. ALLARD."

"To the Trustees of Lady Hewley's Fund.

"Gentlemen:

"We, the undersigned, beg leave to recommend to your particular "attention the case of the Reverend John Ashworth, the resident Mi-"nister of a society of Unitarians which has recently been established [40] "at New Church, a populous manufacturing district. The congre-"gation consists chiefly of weavers, a sober, honest, and industrious "people, but of very limited means for the support of a minister.

"WM. HASSAL,
"G. W. ELLIOTT,
"WM. WALKER.

"Rochdale, May 8th 1815.

"RICHARD ASTLEY,
"WM. KERSHAW,
"RAWDON BRIGGS,
"JOHN RHODES,
"T. R. RALPH,
"JOHN THOMSON,
"C. H. DAWSON.

"Halifax, May 10th 1815."

read the list of ministers and congregations set forth in page 14 of the printed report now produced and shown to deponent, marked with the letters (AA), (being the list of ministers who are Life-trustees in consequence of collections in their congregations subsequent to April 1805, contained in the forty-fifth report of the Manchester College, York,) and that the ministers and congregations severally known to deponent, or which deponent is able to set forth, are of that class of Dissenters called Unitarian; and deponent would select from that list, as personally known to himself, or known to himself by common reputation to be Unitarian ministers and Unitarian congregations, the following, *viz.* William Turner of Newcastle-on-Tyne, Edward Higginson of Derby, William Harrison of Blakeley, Nathaniel Phillips, D.D. of Sheffield, John Harrison of Kendal, Joe Hunter of Bath, John Grundy of Liverpool, J. Gooch Robberds of Manchester, John Row of Bristol, R. Scott of Portsmouth, Samuel Parker of Stockport, Arthur Dean of Stand, Lant Carpenter, L.L.D. of Bristol, James Yates of London, Joseph Hutton, L.L.D. of Leeds, Richard Astley, late of Gloster, now of Shrewsbury, William Lamport of Liverpool, John James Taylor of Manchester, J. W. Morris of Dean Row, R. Aspland of Hackney, and Joseph Kelly of Whitby.

The Unitarian minister, the Reverend John Grundy, was examined, and his depositions are in part in the following words. That he is acquainted with the Manchester College at York. That it is in high reputation as a college or school for the education of Dissenting ministers. That, as far as the fundamental rules of the said college are concerned, it is a proper school for the education of Dissenting ministers of all classes, there being no inculcation of any particular doctrine or tenet; but that, in the opinion of many, it may be considered as more proper for Unitarians than Trinitarians, the heads of the establishment being Unitarian. That he is a Dissenter from the Established Church, of the class called Unitarian, and that the said college is a proper and fitting college for the education of a minister of deponent's persuasion. That he hath not filled the office of President, or Vice-President, Public Examiner, or Secretary, Treasurer, or Deputy Treasurer of the Manchester College at York, but that he is a Trustee for life, and hath been one of the Committee of the said college. That the Committee of the said Manchester College annually makes a report by the Committee to the public, and that the said report is annually printed and distributed, and that he hath looked upon the exhibits marked (ZZ), and that they are respectively a report of the Manchester College at York for the years 1818 and 1821, made at the thirty-second and thirty-fifth annual meetings of the Committee, and that the annual reports published as aforesaid are commonly believed to be, and are circulated as the annual reports of the Manchester College. That the said Manchester College, in practice and as now conducted, is an establishment for the education of divinity students of the class of Dissenters called Unitarian, and that one of the objects of the said establishment, in practice and as now conducted, is the preserving a succession of regularly well-educated ministers of the Unitarian class of Dissenters in particular. That he hath looked upon and read the printed circular letter with the name Charles Wellbeloved affixed to it, contained in the exhibit (Z), and that by the words "ministers in our class of Dissenters," contained in the said printed letter,

what are commonly called Unitarian belief and doctrine, are not fit objects of, and are not entitled to partake of the charities of Dame Sarah Hewley, in the pleadings of the cause mentioned. And the Relators, by their Counsel, having then made an offer to allow the Defendant, John Pemberton Heywood, to remain as a Trustee of the said charity, and the said Defendant not having by his Counsel accepted such offer, the Court did order and it was decreed, that the said Defendant, John Pemberton Heywood and also all the other Defendants, be removed from being Trustees and Sub-trustees or Managers, respectively, of the said charities, and that it should be referred to the Master of the Court in rotation, to appoint proper persons to be Trustees and Sub-trustees or Managers, respectively, or in the room of the said Defendants, and that the Defendants, severally, should convey, assign, and transfer the trust estate and funds belonging to the said charities vested in them, with the approbation of the said Master to such new Trustees so to be appointed to, for, and upon the several trusts, and to such uses, as are expressed and declared of and concerning the same, and they were to declare the trusts thereof accordingly, and that such conveyance and assignment should be settled by the said Master. And that it should be referred to the Master to take an account of the rents and profits of the said charity estates, and of the funds belonging thereto, received by the said Defendants, or any or either of them, or by their or any or either of their order, or for their, or any or either of their use, since the 25th day of March 1830; and in taking the said accounts, the said Master was not to disturb or disallow the distribution made of the said rents and profits by the said Defendants, or any or either of them, in or about the month of May 1830, to whom it should appear they had distributed the same. And that it should be referred to the Master to tax all parties their costs of the suit up to that time, as between solicitor and client. And that the said Master should inquire whether the said Relators and Defendants had properly incurred any, and what costs, charges and expenses, relating to their cause, beyond their said costs thereof; and if the said Master should find that the said Relators and the said Defendants, or any or either of them, had properly incurred any such costs, charges, and expenses, then the said Master should take an account thereof, and tax and settle the same accordingly. And that so much of the 10,097*l.* 8*s.* 11*d.* Bank Three per Cent. Annuities, standing in the name of the Accountant-general of the Court, in trust in this cause, as would be sufficient to raise the amount of the Relators' said costs in this suit, and the said costs, charges, and expenses of the said Relators, if any, when so taxed and settled as aforesaid, should be sold, with the privity of the Accountant-general, with the usual directions in that behalf, and with the money to arise by the said sale, when so paid into the Bank, the Relators' said costs of this suit, and the said costs, charges, and expenses of the said Relators, if any, be paid to Mr. Joseph Blower, their Solicitor; and the said Defendants were to be at liberty to retain what the said Master should tax for the said costs, and charges, and expenses, if any, out of any monies remaining in their hands belonging to the said charity. And that it should be referred to the said Master to approve of a proper scheme for the application of the residue of the funds of the said charity, after

paying and retaining thereout the said costs of all parties, and the said costs, charges, and expenses of the said Relators, and of the said Defendants, if any; and also, after setting apart a sufficient sum for the subsequent costs of this suit, having regard to the declaration therein before made respecting the said charities, and for the better taking the said accounts, the parties were to produce before the said Master, upon oath, all books, papers, and writings, in their custody or power, relating thereto, and were to be examined upon interrogatories as the said Master should direct, who, in taking the said accounts, was to make unto the parties all just allowances. And his Honour reserved the consideration of all further directions and of the subsequent costs of this suit, until after the said Master should have made his report; [42] and any of the parties were to be at liberty to apply to this Court, as there should be occasion.

The Appellants, and the said John Pemberton Heywood, deceased, conceiving themselves to be aggrieved by the said decree, and being advised that the same was erroneous, presented their Petition of Rehearing and Appeal to the Lord High Chancellor of Great Britain, and thereby prayed his Lordship to rehear the said cause, and to appoint some short day for that purpose.

The said Petition of Appeal came on to be heard before the Lord High Chancellor of Great Britain, Lord Brougham and Vaux, assisted by Mr. Justice Littledale and Mr. Baron Parke, on the 26th, 27th, 28th, and 29th days of June 1834, when the further hearing thereof was adjourned.

The said Petition of Appeal again came on to be heard *de novo* before the then Lord High Chancellor of Great Britain, Lord Lyndhurst, assisted by Mr. Baron Alderson and Mr. Justice Patteson, on the 17th and 18th of February 1835, when the hearing thereof was adjourned.

The Solicitors for the Respondent and Relator and the Appellants, on the 10th of April 1835, gave and signed a written consent, that f Lord Lyndhurst would hear the appeal, either with or without the assistance of any of his Majesty's Judges, the respective parties would give to his Lordship's judgment, if delivered after he should have quitted office, the same effect and no further, as it would have had in the event of its being delivered by him while in possession of the great seal.

The Appeal came on to be further heard on the 11th and 15th of April 1835, and on the 5th of February 1836, Mr. Baron Alderson delivered the joint opinion of himself and Mr. Justice Patteson, and thereby expressed the concurrence of the said two Judges in the decision of the Vice-Chancellor; and Lord Lyndhurst, after having fully stated his reasons for so doing, was pleased to affirm the decree of the Vice-Chancellor bearing date the 23rd of December 1833. And it was further Ordered, That the sum of 20*l.*, deposited with the Registrar on setting down the said Petition of Appeal, should be returned to the Defendants. And it was Ordered, That it should be referred to the Master to whom the cause stood referred, to tax the Relators their costs occasioned by the Petition of Appeal, and the said Master was to inquire whether the Relators had properly incurred any, and what charges and expenses, relating to the said Petition of Appeal, beyond their said costs thereof; and if the said Master should find that the Relators had properly incurred any such charges and expenses,

"his Father. It struck us that, if the Father required a satisfaction to "his justice, the Son, if equal with him, must, for the same reason, "require one too; and then it gave us the idea, that there was one "God who was stern and inflexible—another, kind and generous, and "yet these are one and equal in perfection. These, with a whole heap "of inconsistencies which gather round this doctrine, caused us to "cast this ancient piece of orthodoxy to the moles and to the bats.

"We set about our work, continued to enquire after truth, and im-"mediately after this we relinquished the doctrine of the Divinity of "Christ. Indeed, the place at which we are now arrived is supposed "by our orthodox neighbours to be the mystery of iniquity.

"Gentlemen, we have heard of your liberality, and that, as the "Trustees of Lady Hewley's Fund, you have it in your power to be "kind to the needy. We have given you a very brief account of our "rise, progress, and present condition as a Church of God on Unita-"rian principles. We pray you would consider the condition of our "worthy needy minister. We think it no flattery to say, that he has "been worthy a better treatment than we have been able to give him "or can give him; we have therefore, being beggars, made his and "our condition known to you. May the abundance of your liberality "abound to the relief of our poverty, to the encouragement and sup-"port of our worthy minister, and may the divine bounty cause your "fund to be enriched, that you may bless the families of many indi-"gent ministers.

(Signed) "JOHN LORD,
"JONATHAN RUDMAN,
"JAMES HOLT, } Trustees."

"Gentlemen:

"I do most cordially recommend the case of the people at New "Church, and their minister, my lately acquired but highly esteemed "friend, to your regard.

"Bury, May 6th 1815. "W. ALLARD."

"To the Trustees of Lady Hewley's Fund.

"Gentlemen:

"We, the undersigned, beg leave to recommend to your particular "attention the case of the Reverend John Ashworth, the resident Mi-"nister of a society of Unitarians which has recently been established [40] "at New Church, a populous manufacturing district. The congre-"gation consists chiefly of weavers, a sober, honest, and industrious "people, but of very limited means for the support of a minister.

"WM. HASSAL,
"G. W. ELLIOTT,
"WM. WALKER.

"Rochdale, May 8th 1815.

"RICHARD ASTLEY,
"WM. KERSHAW,
"RAWDON BRIGGS,
"JOHN RHODES,
"T. R. RALPH,
"JOHN THOMSON,
"C. H. DAWSON.

"Halifax, May 10th 1815."

And the general misapplication of the part of the charity given for poor and godly ministers of Christ's holy gospel to Unitarian ministers, was established, by proving as an exhibit the account of the last distribution made by the Appellants, the Trustees of Lady Hewley's charities, to poor and godly ministers prior to the filing of the information, being the exhibit (LL), and by examining some of the same witnesses, to prove that divers of the ministers whose names are contained in the said list as annual stipendiaries are Unitarian ministers; and in particular, by examining the Reverend William Manning Walker, who deposed as follows. That he hath looked upon the exhibit marked with the letters (LL). That the same purports to be an account of monies received and disbursed by the Trustees of Lady Hewley's charity, from the 10th of September 1829 to the 9th of September 1830. That he hath looked upon and read the same, and that among the names set forth in such list, deponent can testify that the names he will now mention from such list are the names of Unitarian ministers of what were originally Presbyterian meeting-houses or chapels, but are now used and employed for Unitarian worship, and of ministers supported by congregations now of Unitarian faith or principles, and commonly reputed and believed so to be; but the congregations originally assembling in such meeting-houses were called Presbyterian, and were actually Trinitarian and not Unitarian. That there are now, as he verily believes, no Presbyterian ministers in England of Unitarian faith or principles. That the names he has referred to as contained in the said list, and which he would now set forth and declare to be, in his belief, the names of Unitarian ministers belonging to meeting-houses or chapels originally Presbyterian, and therefore Trinitarian, but now used for Unitarian worship, are the following: James Taylor of Rivington, William Tate of Chorley, Robert Smethurst of Monton, William Dinurddie of Wigan, George Buckland of Dob-Lane, James Brooke of Hyde, J. W. Morris of Dean-Row, James Maddie of Risley, William Harrison of Blakely, Samuel Parker of Stockport, William Probbert of Walmsley, William Whiklegg of Platt, P. R. Davis of Chowbent, Joseph Jefferies of Gorton, Arthur Dean of Stand, William Holland of Bury, John Bayland of Hindley, Franklin Haworth of Rochdale, Charles Wallace of Alltringham, John Gaskell of Duckinfield, J. Ashton of Whitby, William Lamport of Lancaster, Charles Knowles of Park-Lane, T. C. Holland of Loughboro', Edward Higginson of Derby, William Johns of Cross Street (who was Classical Tutor in the Manchester College at the time deponent was student there), and the Reverend Charles Wellbeloved of York.

With regard to Lady Hewley's hospital or almshouse, it was admitted by the answers of the Sub-trustees, the Reverend Charles Wellbeloved and others, that the Apostles' Creed and Bowles's Catechism were no longer used or required as a qualification for admission to the hospital or almshouse.

The cause came on to be heard before his Honour the Vice-Chancellor on the 17th, 18th, and 19th, and 23d days of December 1833, and his Honour was pleased to make a decree, bearing date the 23d day [41] of December 1833, whereby he declared, that ministers or preachers of what are commonly called Unitarian belief and doctrine, and their widows and members of their congregations, and the persons of

hat are commonly (ed Unitarian belief and doctrine, are not fit objects of, and are not e...itled to partake of the charities of Dame Sarah Lawley, in the pleadings of the cause mentioned. And the Relators, y their Counsel, having then made an offer to allow the Defendant, ohn Pemberton Heywood, to remain as a Trustee of the said charity, nd the said Defendant not having by his Counsel accepted such offer, he Court did order and it was decreed, that the said Defendant, John Pemberton Heywood and also all the other Defendants, be removed rom being Trustees and Sub-trustees or Managers, respectively, of he said charities, and that it should be referred to the Master of the Court in rotation, to appoint proper persons to be Trustees and Sub-rustees or Managers, respectively, or in the room of the said Defendants, and that the Defendants, severally, should convey, assign, and transfer the trust estate and funds belonging to the said charities vested in them, with the approbation of the said Master to such new Trustees so to be appointed to, for, and upon the several trusts, and to such uses, as are expressed and declared of and concerning the same, and they were to declare the trusts thereof accordingly, and that such conveyance and assignment should be settled by the said Master. And that it should be referred to the Master to take an account of the rents and profits of the said charity estates, and of the funds belonging thereto, received by the said Defendants, or any or either of them, or by their or any or either of their order, or for their, or any or either of their use, since the 25th day of March 1830; and in taking the said accounts, the said Master was not to disturb or disallow the distribution made of the said rents and profits by the said Defendants, or any or either of them, in or about the month of May 1830, to whom it should appear they had distributed the same. And that it should be referred to the Master to tax all parties their costs of the suit up to that time, as between solicitor and client. And that the said Master should inquire whether the said Relators and Defendants had properly incurred any, and what costs, charges and expenses, relating to their cause, beyond their said costs thereof; and if the said Master should find that the said Relators and the said Defendants, or any or either of them, had properly incurred any such costs, charges, and expenses, then the said Master should take an account thereof, and tax and settle the same accordingly. And that so much of the 10,097*l.* 8*s.* 11*d.* Bank Three per Cent. Annuities, standing in the name of the Accountant-general of the Court, in trust in this cause, as would be sufficient to raise the amount of the Relators' said costs in this suit, and the said costs, charges, and expenses of the said Relators, if any, when so taxed and settled as aforesaid, should be sold, with the privity of the Accountant-general, with the usual directions in that behalf, and with the money to arise by the said sale, when so paid into the Bank, the Relators' said costs of this suit, and the said costs, charges, and expenses of the said Relators, if any, be paid to Mr. Joseph Blower, their Solicitor; and the said Defendants were to be at liberty to retain what the said Master should tax for the said costs, and charges, and expenses, if any, out of any monies remaining in th hands belonging to the said charity. And that it should be refe ed to the said Master to approve of a proper scheme for the applicau residue of the funds of the said charity, after

paying and retaining thereout the said costs of all parties, and the said costs, charges, and expenses of the said Relators, and of the said Defendants, if any; and also, after setting apart a sufficient sum for the subsequent costs of this suit, having regard to the declaration therein before made respecting the said charities, and for the better taking the said accounts, the parties were to produce before the said Master, upon oath, all books, papers, and writings, in their custody or power, relating thereto, and were to be examined upon interrogatories as the said Master should direct, who, in taking the said accounts, was to make unto the parties all just allowances. And his Honour reserved the consideration of all further directions and of the subsequent costs of this suit, until after the said Master should have made his report; [42] and any of the parties were to be at liberty to apply to this Court, as there should be occasion.

The Appellants, and the said John Pemberton Heywood, deceased, conceiving themselves to be aggrieved by the said decree, and being advised that the same was erroneous, presented their Petition of Rehearing and Appeal to the Lord High Chancellor of Great Britain, and thereby prayed his Lordship to rehear the said cause, and to appoint some short day for that purpose.

The said Petition of Appeal came on to be heard before the Lord High Chancellor of Great Britain, Lord Brougham and Vaux, assisted by Mr. Justice Littledale and Mr. Baron Parke, on the 26th, 27th, 28th, and 29th days of June 1834, when the further hearing thereof was adjourned.

The said Petition of Appeal again came on to be heard *de novo* before the then Lord High Chancellor of Great Britain, Lord Lyndhurst, assisted by Mr. Baron Alderson and Mr. Justice Patteson, on the 17th and 18th of February 1835, when the hearing thereof was adjourned.

The Solicitors for the Respondent and Relator and the Appellants, on the 10th of April 1835, gave and signed a written consent, that f Lord Lyndhurst would hear the appeal, either with or without the assistance of any of his Majesty's Judges, the respective parties would give to his Lordship's judgment, if delivered after he should have quitted office, the same effect and no further, as it would have had in the event of its being delivered by him while in possession of the great seal.

The Appeal came on to be further heard on the 11th and 15th of April 1835, and on the 5th of February 1836, Mr. Baron Alderson delivered the joint opinion of himself and Mr. Justice Patteson, and thereby expressed the concurrence of the said two Judges in the decision of the Vice-Chancellor; and Lord Lyndhurst, after having fully stated his reasons for so doing, was pleased to affirm the decree of the Vice-Chancellor bearing date the 23rd of December 1833. And it was further Ordered, That the sum of 20*l.*, deposited with the Registrar on setting down the said Petition of Appeal, should be returned to the Defendants. And it was Ordered, That it should be referred to the Master to whom the cause stood referred, to tax the Relators their costs occasioned by the Petition of Appeal, and the said Master was to inquire whether the Relators had properly incurred any, and what charges and expenses, relating to the said Petition of Appeal, beyond their said costs thereof; and if the said Master should find that the Relators had properly incurred any such charges and expenses,

was to take an [illegible] thereof, and tax and settle the same accordingly. And it was Ordered, That so much of the 13,542*l.* 3*s.* 6*d.* Bank three per Cent. Annuities, standing in the name of the Accountant-general of the said Court, in trust in the said cause, as would be sufficient to raise the amount of such costs, and the said charges and expenses of the Relators, if any, when so taxed and settled, should be sold with the privity of the said Accountant-general, with the usual direction in that behalf, and out of the money to arise by such sale, and the sum of 203*l.* 2*s.* 8*d.* cash, it was Ordered, That the costs, charges, and expenses, if any, when taxed, should be paid to Mr. Joseph Blower, the Relator's Solicitor.

From the said Decree of his Honour the Vice-Chancellor, and the said Order affirming the said Decree, the said Appellants have thought fit to appeal; but the Respondents humbly hope the same will be affirmed with costs, for the following among other

REASONS:

First.—Because Lady Hewley, by whom the charities in question were founded, was a Trinitarian in belief and doctrine, and the application of her charities to the benefit of ministers or preachers of what are commonly called Unitarian belief [43] and doctrine, and their widows and members of their congregations, was and is inconsistent with her design and intention.

Second.—Because the Trustees and Sub-trustees removed (as well those who were proved to be Unitarians, as those who were not proved to be so) had all systematically concurred in breaches of trust; and such of them as were clearly proved to be Unitarians were not fit persons to be Trustees or Sub-trustees of the charities in question.

J. L. KNIGHT.
E. KINDERSLEY.

THE ARGUMENT

N THE APPEAL OF THE TRUSTEES TO THE HOUSE OF LORDS.

"*Q.* What is Baptism?	
"*A.* It is dipping, or sprinkling with water, in the name of the Father, of the Son, and of the Holy Ghost.	Matt. xxviii. 19. Acts x. 47.
"*Q.* What is the nature of this Sacrament?	
"*A.* It represents, and (through faith) seals the sprinkling of the blood of Christ, and the washing of the Holy Ghost.	Acts xxii. 16. Tit. iii. 5. Acts viii. 37. 1 Pet. iii. 21.
"*Q.* What shall be the condition of the godly after this life?	
"*A.* They shall be ever with the Lord.	1 Thess. iv. 17. John xvii. 17, 24.
"*Q.* What shall be the condition of the unbelievers and wicked men?	
"*A.* They shall perish with everlasting destruction from the presence of the Lord."	2 Thess. i. 8, 9. Mat. xxv. 41, 46.

II. For the purpose of showing that Lady Hewley and her original Trustees were Trinitarian Dissenters.

The same witnesses were examined; and amongst others Dr. John Pye Smith, who deposed, that he was acquainted with the doctrine and religious belief considered to have been held or professed by Lady Hewley, Dr. Coulton, the Reverend Mr. Hotham, and the Reverend Richard Stretton, only by common report, traditional information (particularly in his own family and the family of his late deceased wife), and authentic publications, and that from such report and information or publications, he could have no doubt, and did verily believe the same, that Lady Hewley, Dr. Coulton, Mr. Hotham, and Richard Stretton, were Trinitarians, and that they were severally Dissenters, and believed, considered, and reputed to be Dissenters from the Established Church. That he could not affirm of what denomination or class of Dissenters they were; but, as a matter of probability, he had no doubt that they were of the Presbyterian or of the Congregational denomination. That, in his belief, they were all Trinitarian Dissenters, and were considered and reputed to be Trinitarian Dissenters. That he could not state whether Nathaniel Gould, Thomas Marriot, John Bridges, Thomas Nesbett, James Wyndlow, Timothy Hodgson, Matthew Baycock, Samuel Smith, Robert Rhodes, Martin Hotham, and William Hotham, were or not described, or recorded, or [23]mentioned, as having been Dissenters of note, in any history, memoir, or tract: save only as to said Mr. Bowles, and Richard Stretton, of whom, to allude to no other volumes, lives occur in the Nonconformist's Memorial, originally published by Dr. Edmund Calamy; and as to the latter of whom, *viz.* Richard Stretton, a funeral sermon and memoir were published by the celebrated and Reverend Matthew Henry; and as to Lady Hewley and Dr. Coulton, an account is contained in the Life and Errors of John Dunton, citizen of London, published in the year 1705, under the general title of the same John Dunton's Panegyric on eminent Persons.

The evidence of Dr. Bennett was to a similar effect.

The Reverend James Turner, minister of the Independent or Congregational Church of Knutsford, Cheshire, deposed, that Lady Hewley is mentioned in the life of Oliver Heywood, who was a frequent visitor of, and intimately acquainted with her Ladyship, which life was

remind your Lordships and to impress upon your minds, that those deeds were carefully prepared by the advice of counsel, skilfully framed, and expressing in definite and distinct terms the objects that she had in view. This is not a case where the intention of the donor is left in doubt—where there is only some general, vague expression—and where his meaning cannot be guessed at even without extraneous evidence; but here, looking to the face of the deeds, you have the intention of the Foundress clearly and distinctly defined.

My Lords, by these deeds she had, and declares that she had, six objects in view; first, to assist poor and godly preachers, for the time being, of Christ's holy Gospel; secondly, to assist poor and godly widows of the same description of persons—that is, of poor and godly preachers, for the time being, of Christ's holy Gospel. And, my Lords, as I pass, I must draw your Lordships' attention to these words—"for the time being." The third object, my Lords, was to encourage and promote the preaching of Christ's holy Gospel in poor places; the fourth was, to assist in the education of young persons intended for the ministry of Christ's holy Gospel. Now, these four objects relate to preaching and teaching; the two remaining apply to eleemosynary assistance to persons who were destitute, without the smallest reference to the propagation or spread of any religious faith whatever; the one being to assist poor and godly persons in distress; where there might be persons in destitute circumstances, they were to receive eleemosynary relief. The sixth was, the maintenance of an hospital for ten almswomen above the age of fifty-five. The building was to be kept in repair, and the sum of £60 a year was to be given for the maintenance of the ten old women. Your Lordships thus see that the objects are to be divided into preaching and eleemosynary relief.

My Lords, there were Trustees appointed by Lady Hewley herself—seven Trustees—with a request that there might be a separate set of Trustees appointed for the management of the hospital. Your Lordships thus see that she, in a very distinct and clear manner, defines what her objects are, and proceeds according to the best advice that professional assistance could afford her.

My Lords, she died in the year 1710, and it was upon her death that the objects of this charity were to be carried into effect. There were seven Trustees whom she denominated Grand Trustees, and there were Trustees appointed for the management of the hospital. The seven Trustees belonged chiefly to a Presbyterian congregation that was chiefly founded by her, at St. Saviour-Gate, in the city of York. My Lords, the charity proceeded and was conducted, and I humbly conceive has been conducted, exactly according to the will of the Foundress. I acknowledge at once that the will of the Foundress is to prevail; but the question is, whence is that will to be learned?—how are you to find out what was the will of the Foundress? And this, my Lords, is the great question, or one great question, that your Lordships, with the assistance of my Lords the Queen's Judges, will have to determine; and I may be allowed, my Lords, to express my gratification that your Lordships have summoned my Lords the Queen's Judges, because I must argue in their presence with great confidence, as indeed I should before your Lordships in their absence, that deeds so prepared and so expressed are to be construed according to what appears upon the face of the deeds, and not by extraneous evidence.

My Lords, those Trustees collected the rents and profits of Lady Hewley's estates, which were very considerable, and they applied them in maintaining the hospital, and in giving assistance to a vast number of Dissenting congregations,—latterly, to no fewer than 237. Those congregations were partly Presbyterian, partly Baptist, and partly Independent, these being the three great branches of the regular Dissenters in this country. The Trustees, my Lords, without considering the particular religious tenets or doctrines which

might belong to individuals, did assist a great many persons who were in distress, from the funds of this charity.

My Lords, this system went on without the smallest complaint until about the year 1827. It so happened, my Lords, that of the Presbyterian congregations whose pastors were assisted out of this fund, a good many, between the time of Lady Hewley and the time when this complaint arose, had changed upon several points their religious opinions. It is alleged that in the time of Lady Hewley those Presbyterian congregations believed in the doctrine of the Trinity; that they believed in the doctrine of Original Sin and the doctrine of the Atonement; and it is alleged, and truly alleged, that a number of those Presbyterian congregations now do not believe in the doctrine of the Trinity; that they do not believe in the doctrine of Original Sin or in the doctrine of Atonement; that although they may be denominated, and are denominated, Presbyterians, they have become Unitarians. My Lords, out of the 237 chapels to which assistance was given at the time when this complaint arose, there were thirty-eight of the description I have mentioned, that were denominated Presbyterian, that had been what were called orthodox Dissenters and had become Unitarian; but of the 237, thirty-eight only were of that description, all the rest being Baptists and Independents, with regard to whom we have had no complaint from the Relators, the Relators themselves being Independents.

That change in the opinions of the Presbyterian congregations occurred before the middle of the last century, and had gone on down to the time when this Information was filed.

My Lords, this subject was brought before the Charity Commissioners in the year 1827; they expressed a strong opinion in favour of the honest and just administration of the funds of the charity, but they suggested a doubt as to who were the proper objects of the charity, and thought that it might be fit that that should be determined by a Court of Equity. My Lords, the question was submitted to the then Attorney-General, Sir James Scarlett, now Lord Abinger. He, my Lords, refused to interfere, I must say, most wisely. As the charity in the year 1827 was administered in the same manner as it had been for more than seventy years; as there had been no complaint except by some Independents who wished to have a larger share than they had yet enjoyed, and wished to grasp the whole into their own hands; and as there was no charge of corruption or mal-administration beyond not giving the Independents all that they sought, Sir James Scarlett refused to interfere. Upon which, my Lords, some private Relators, Independents, men belonging to a persuasion who had very largely shared in the bounty of Lady Hewley, but who, not contented with that, were resolved, as far as lay in their power, that their brethren of the Presbyterian congregations should not share in that bounty, and that the whole of it should belong to them, came forward, entirely regardless what misery or destitution might arise from the steps that they were determined to take.

My Lords, when there are private Relators who wish to file an Information as to the nature of a charity, as your Lordships are well aware, the Attorney-General cannot with propriety refuse the use of his name, if there be any arguable question to be submitted to a Court. The invariable practice which I myself have followed for several years, and which has been, I believe, adopted by all my predecessors, has been, that upon a certificate by a gentleman at the bar, saying that there is some question that may fairly be submitted to the Court, it does not become him to stop inquiry; therefore the sanction of his name must be afforded. My Lords, it was in these circumstances that, in the month of June 1830, this Information was filed by private Relators of the Independent persuasion, who, upon the showing of the Relators themselves, were by no means of the same opinions with Lady Hewley,—certainly not with regard to discipline, and I should say very doubtful with regard to doctrine; and if, as they say, the charity is to be

confined exclusively to those who were of their own religious opinions, I think that they have no place of standing in Court, and must renounce the bounty which they have so long enjoyed; the charity would be at an end, and some new scheme must be adopted.

My Lords, this Information, after stating certain facts respecting Lady Hewley which I must undoubtedly admit and upon which I shall by and by rely, states "that Lady Hewley, during the time of the religious persecutions of the English Presbyterians and Independents and other persons calling themselves Godly Dissenters from the Established Church, in the reign of Charles the Second, stood forward as the protector and supporter in Yorkshire of the ejected ministers of St. Bartholomew's Day, 1662, under the Act of Uniformity of the 13th and 14th of Charles the Second, and of the persons calling themselves Godly, who were Nonconformists, and who were subject to pains and penalties in those days for their forms of religious worship." Now the Relators themselves state that Lady Hewley stood forward to assist those who were subject to pains and penalties in those days for their form of religious worship; and yet they are by and by to tell your Lordships that it is utterly impossible she should have in her contemplation to assist any religionists, the open celebration of whose religion was not tolerated and sanctioned by the statute-law.

The Information goes on to state, "that her charitable works were specially extended to the poor and ejected ministers and Nonconformists of those days, and that she is mentioned in the Diary of Oliver Heywood, one of the most zealous of the Nonconformist and ejected ministers. That being minded and disposed to devote her property to the purposes mentioned in the foundation-deeds, she had frequent conferences with her friends on the subject, as well as consultations with counsel." Then your Lordships are not to let in any extraneous evidence, or to put any different construction upon the deed because she was *inops consilii*. She had various consultations with counsel, "under whose advice, and after long and mature deliberation and several years before her death, she executed the deeds thereinafter mentioned." Now, my Lords, this is stated in the Information itself. It then goes on to state, "that new Trustees of the charities and new Managers of the hospital were from time to time chosen and appointed, and the charity estates and premises conveyed to them by the survivors of the said original Trustees and Managers and their successors; and that the fifth appointment and conveyance to new Trustees took place some time in the year 1755, when the then survivors chose and appointed Samuel Shore, Aymor Rich and Thomas Lee, to be new Trustees."

It then goes on, my Lords, to state, that "so far back as the year 1755, there was a clergyman of the name of Cappe who was elected as the minister of St. Saviour-Gate chapel, in the room of Mr. Hotham, who had officiated there from the time of Lady Hewley; that Mr. Cappe was an Arian; and that at that time the congregation went over to the Arian persuasion." It then, my Lords, goes on to state the appointment of the present Trustees, and to describe their religious opinions—that is, the religious opinions of *some* of them; for I must beg your Lordships to bear in mind that with regard to *four* of the Trustees, it is not alleged in the information that they are of the Unitarian persuasion. There are two Mr. Heywoods who are Trustees. It is not alleged that either of them is an Unitarian; and as to Mr. John Wood, who was elected after this Bill was filed in June 1830, and who can hardly be considered as having been guilty of any mal-administration, it is not alleged that he is an Unitarian; and there is a fourth who is a member of the Church of England.

Lord BROUGHAM.—He has been in but a very short time, if it is Mr. John Wood, of the Tax Office, now of the Excise.

Mr. ATTORNEY-GENERAL.—It is the same, my Lord. He was elected after this Bill was filed. There is no question as to his religious

much less with regard to any malversation; but because he is made ıdant and joined in the Appeal from his Honour the Vice-Chancellor, s a Decree against him, and he is saddled with costs to the amount of

l WYNFORD.—I thought the costs had been given out of the estate.
ATTORNEY-GENERAL.—Not so, my Lord. They were by the 'hancellor; but when the matter came before Lord Lyndhurst, I may am sure, with the most sincere and perfect respect to that noble and d Judge, to the great surprise of our side—I will not presume to say of her side—the costs of the Appeal were not ordered to be paid out of nd; and it will be one question for your Lordships to determine, if other question were decided against me (whereas I hope, my Lords, ıis Decree will be simply reversed and the Bill dismissed), it will be ır Lordships to say whether Mr. Wood and the whole of the Trustees ıot bound in the discharge of their duty to take the opinion of the High Chancellor upon that occasion. His Honour the Vice-Chancellor ; said, "Of course you will appeal to the Lord-Chancellor," it would ıeen, I say, gross misconduct on the part of those Trustees, if, in the ıstances I shall more particularly bring to your Lordships' notice by r, they had not appealed to the Lord-Chancellor.
d BROUGHAM.—I understand the matter to be this. The Judg- with the Decree upon the Appeal before the Lord-Chancellor, did not e that part of the Vice-Chancellor's order which directed the costs him to be paid to the Trustees, but that it only saddled the appel- with the costs of the Appeal.
ATTORNEY-GENERAL.—Exactly so, my Lord.
KNIGHT BRUCE.—No, my Lord, it did not do that.
d BROUGHAM.—He did not amend the Vice-Chancellor's decision particular.
ATTORNEY-GENERAL.—No, my Lord; he merely affirmed.
d BROUGHAM.—The Court below gave the costs out of the estate; ch as to say, You were right in going to the Vice-Chancellor; but the Chancellor refused the costs on the Appeal, saying, You ought not to ome here.
KNIGHT BRUCE.—Each party was left to bear his own costs of ppeal.
ATTORNEY-GENERAL.—Will my learned friend, Mr. Knight , say that, taking the regular course of proceedings in charity cases, ıd been thought to be a proper Appeal, if it had not been dismissed as proper Appeal, the costs of the parties would not have been paid out of nd? Why were the costs of the original hearing paid out of the fund? because it was a fair and proper case for the Trustees to appear and he opinion of the Court upon; and so, my Lords, if your Lordships l be of opinion that the Trustees in the discharge of their duty did well e the opinion of a higher Court upon his Honour's Decree, then it is according to the established principles upon which charity Informa- are decided, that the costs of the Trustees in bringing that Appeal to have been paid out of the charity fund. But I am now proceeding he Information.
: Information alleged, "That save and except John Pemberton Hey- Peter Heywood, George Palmes and John Wood, each and every one said Trustees and Managers, Sub-Trustees and Governors of the said y, is or was in his religious belief what is commonly called a Unita- so that there is an exception of those four individuals, the two Mr. oods, Mr. Palmes and Mr. Wood; but they are all removed—those ere Unitarians and those that are not alleged to be Unitarians. The nation then states that Mr. Wellbeloved succeeded Mr. Cappe as the ıer at St. Saviour-Gate chapel, on the death of the former, in 1799,

and that he is now the preacher of St. Saviour-Gate chapel, and that he is what is commonly called a Unitarian minister, and preaches Unitarian doctrines in the chapel, and that the congregation attending the chapel are Unitarians. The Information charges that the defendants, Shore and the other Trustees, are wont to term or call themselves Unitarians.

The Information further charges, "That the sect or class or denomination of Christians commonly called Unitarians—." Now I must call your Lordships' attention to this admission in the Information, which you will by and by find to be very material; for in the argument below, (I know not what course will be taken here,) it was denied that Unitarians are Christians. But what is the language of the Information? In the passage I am now reading, and in various other passages, it treats them as *Christians*. It says, "That the sect or class or denomination of *Christians* commonly called Unitarians, reject as utterly unscriptural each and every one of the following doctrines: that is to say, the Trinity of Persons in the Deity; the Incarnation; the true and perfect Divinity of the Person of the Son of God; that the Son of God is the Second Person in the Trinity, and equal with the Father; the Divinity and Personality of the Holy Ghost, or Holy Spirit, as the Third Person in the blessed Trinity, and equal with the Father and the Son; and the forgiveness of sins and salvation through the merit of the Atonement." But, in spite of the denial of those doctrines to which we adhere, it is allowed that they are Christians.

Then the prayer of the Information is of considerable length; and your Lordships will find that at page 15 of the appellants' case, it is, amongst other things, prayed, "That his Lordship will be pleased to declare by the Decree of the Court, that such Dissenters alone as are now commonly called Orthodox Dissenters, and as would have been within the protection of the Act of Toleration of the 1st of William and Mary, at the time of the foundation of the charities, and would not then have been subject to the penalties of the 9th and 10th of William the Third, against blasphemy, can now be considered as coming within the intent and meaning of Lady Hewley, and as entitled to participate in the benefit of her charities."

Your Lordships will observe that the prayer of the Information, to which the Vice-Chancellor acceded, (his Decree being to carry the prayer into full effect,) is this—that not only with regard to preaching, but with regard to eleemosynary relief, no one shall be entitled to partake in the benefit of Lady Hewley's charities, unless he believe all the doctrines that Lady Hewley is supposed to have believed. And if any one in the slightest degree varies from her creed, not only a minister, who is to preach doctrines from the pulpit, but a starving pauper, he or she is to derive no benefit from the fund that Lady Hewley has left. And, my Lords, I must say, with very great respect both to the Vice-Chancellor and to the noble and learned Judge who affirmed his Decree, that the distinction between these two objects of the charity has not been distinctly kept in view.

My Lords, to this Information answers are put in. There is the answer of the Grand Trustees, who say that, according to their information and belief, Lady Hewley was a person of very enlarged benevolence, and of great liberality and toleration of the opinions of others; and that in the relief extended by her to suffering Nonconformists, she was not actuated by an exclusive regard to the peculiar creeds or religious sentiments of the objects of her bounty. They say, they do not believe that the object of Lady Hewley, in instituting the charity, was to promote or encourage the spreading of any stated doctrines or forms of Protestant worship in particular; but that, in a spirit of general benevolence, she was desirous of extending her bounty to the numerous classes of professing Christians who were then, or might thereafter be, struggling with persecutions and pecuniary difficulties.

Lord BROUGHAM.—What was the date of the foundation?

Mr. ATTORNEY-GENERAL.—1704 was the date of the first deed—1707 of the second.

Lord BROUGHAM.—She died in 1710?

Mr. ATTORNEY-GENERAL.—She died in 1710. Then they say, "They believe that the defendant Wellbeloved had been chosen by the congregation at St. Saviour-Gate chapel, assistant-minister to Mr. Cappe; and that he had officiated as such assistant-minister for nearly nine years previous to the said Mr. Cappe's decease, without any stipendiary allowance from the said Dame Sarah Hewley's Trustees; and that on Mr. Cappe's decease, he was elected to succeed him as sole preacher there. And these defendants admit that he is now the sole preacher of the said chapel." The preachers in this chapel from Lady Hewley's time were only three—Mr. Hotham, Mr. Cappe and Mr. Wellbeloved.

With regard to the hospital, they say, "That the management of the almshouse is conducted by the Sub-Trustees appointed for that purpose pursuant to the direction of the said Dame Sarah Hewley; and these defendants do not interfere in such management." These are the Grand Trustees. They then state that, as Trustees of the charity, they are willing and desirous to act under the directions of the Court; and being so, my Lords, I shall, by and by, submit to your Lordships that their private religious belief was a matter that was immaterial, they being willing, whatever their private belief might be, to observe the orders and directions that the Court might prescribe. "But they humbly submit that they ought not to be removed from being Trustees and Managers of the said charities, for these defendants insist that they were duly appointed Trustees or Managers thereof, according to the directions contained in the original deeds of trust of the said Dame Sarah Hewley, for the government of the said charity; and they say that since the period of their appointments respectively, they have, severally, conscientiously and to the best of their ability, duly acted in the execution of the trusts of the said charity; and that they have to the best of their judgment in all respects acted in conformity with the spirit of the said Dame Sarah Hewley's directions regarding the management of the said charity."

They say that Lady Hewley "did not, in the said original deeds of trust, or in her Rules for the management of the said hospital, or in any other documents, to the best of the knowledge or belief of these defendants, give any directions regarding the peculiar mode of belief required to be entertained by the objects of the said charities,—save that, according to the Rules of the said almshouse, the almswomen are required to be of the Protestant religion." They say that, "so far is it from being true, as alleged in the said Information, that these defendants have shewn an undue preference to the Dissenters commonly called Unitarians, that these defendants say they have ascertained, from inquiries made since the said Information was filed, and they believe it to be true, that a very great majority of the preachers and widows who receive stipends from the funds of the said charities are what are commonly called Trinitarian Dissenters, and not what are commonly called Unitarians." I gave your Lordships the proportions before. They add, "That as to such of the objects of the said charity as attend places of Unitarian worship, or profess Unitarian sentiments, these defendants know not and cannot set forth, as to their belief or otherwise, what are their particular opinions. However, these defendants say that, to the best of their belief, all of them are of the Protestant religion, and believe in the divine mission and office of their Lord and Saviour, Jesus Christ, and that the Holy Scriptures of the Old and New Testament contain the revealed will of God; and they receive the same as the rule of their doctrine and practice." "They deny that any applications were made to them before the said Information was filed to discontinue their stipendiary allowances, as is alleged in the said Information. However, these defendants say, that since the filing of the said Information, these defendants have discontinued all the stipendiary allowances heretofore paid by them; although these defendants do not admit that the same was improperly made by them."

Now is this misconduct? There was no application made to them, before the filing of the Bill, to discontinue the allowances which had been made for half a century; and, without any order of the Court, the moment the Bill was filed, they of their own accord discontinued the allowances. And Trustees so acting are supposed to be guilty of misconduct! They are to be removed and their places supplied—by whom, no mortal can tell. But your Lordships will find, upon examining this Decree, that it is entirely silent as to who shall be the objects of Lady Hewley's bounty; and it is entirely silent as to what shall be the qualification of the Trustees that are to be substituted; and, in truth, this Decree has been found to be utterly impossible to be carried into effect. They have been fighting upon it in the Master's Office from the time it was pronounced. Whether the Trustees that are to be appointed shall be Baptists, or whether they shall be Independents; whether they shall be Presbyterians connected with the Church of Scotland, or whether they shall be Presbyterians of the Secession Church, the Master is wholly unable to determine, because upon this subject the Decree is profoundly silent. My Lords, this is the answer of the Grand Trustees.

Then Mr. Wellbeloved, who is the clergyman of the St. Saviour-Gate chapel, and who had received a stipend along with 237 others, he being one of the Trustees of the almshouses, is made a defendant, in the capacity of Sub-Trustee of the almshouses, and he gives his answer. He says, "That in St. Saviour-Gate chapel he has always, to the best of his judgment and belief, preached the pure doctrines of Christ's holy Gospel: that there is a great diversity of opinion amongst persons professing Unitarian opinions, and there is amongst them no settled and admitted standard of belief, save the Holy Scriptures. However, he says that they all, to the best of this defendant's belief, believe in the divinity of the mission and office of the Lord Jesus Christ; and that the Holy Scriptures of the Old and New Testament contained the revealed will of God; and they receive the same as the rule of their doctrine and practice." He concludes by stating, "that in discharging the duty of a Sub-Trustee of the said charity, defendant hath always acted faithfully and conscientiously and to the best of his judgment and ability; and in the further execution of the duties of the said Trust, this defendant is ready and willing to act as this honourable Court shall be pleased to direct."

My Lords, Mr. Palmes is one of the Sub-Trustees for the management of the almshouses, whose duty it is merely to select the old women that are to be placed there; for they have no management of the funds; and Mr. Palmes, who is charged with being an Unitarian, tells your Lordships, at page 63, "that he is a member of the Church of England, and doth not belong to or attend any congregation commonly or otherwise called Unitarian, and that he is not well acquainted with the doctrines and opinions of the persons commonly or otherwise called Unitarian." Now, Mr. Palmes is removed likewise, although a Church-of-England-man; and this doctrine is to be laid down, that a member of the Church of England is incompetent to be a Trustee for the purpose of selecting certain old women who are to be admitted into an almshouse. For these Trustees have nothing in the world to do with the discharge of the charity, as far as preaching or teaching is concerned, and these old women may be of the Church of England. My Lords, if, as has been supposed, all these various branches of Lady Hewley's bounty had the same qualification attached to them, and if it were proved that, as far as preaching was concerned, no one can be admitted to share her bounty unless he is a Nonconformist orthodox preacher, then it follows that no old woman can be admitted into the almshouse unless she is a Nonconformist Trinitarian.

Bishop of ROCHESTER.—She must repeat the Creed, must not she?

Mr. ATTORNEY-GENERAL.—She must repeat the Creed, which I hope may be repeated by a member of the Church of England. She must

repeat the Creed and the Ten Commandments. Does that shew that she may not belong to the Church of England? My present position is this, that these almshouse-women may belong to the Church of England; but although they may belong to the Church of England, a member of the Church of England is removed from this Trust, because he is a member of the Church of England. My Lords, I should confidently contend before your Lordships, that if these old women must necessarily have been Dissenters, there would have been no objection whatever in saying that a member of the Church of England might have been a Trustee, and might have selected the proper objects of the bounty of Lady Hewley, and might exercise all the duties of a Trustee most fairly and honourably and efficiently. But, my Lords, when it comes to this, that these old women may be Churchwomen or may be Dissenters, it does seem to be a most extraordinary thing that it should be laid down that a person is disqualified from acting in execution of the Trust of the almshouses, *because he is a member of the Church of England.* But Mr. Palmes is swept away along with all the other Trustees. It is not at all *noscitur a sociis*, because it is not at all alleged in the Information that he is an Unitarian, and it is proved by his answer, and not denied, that he is a good Churchman.

Lord BROUGHAM.—Is it Mr. George Palmes?

Mr. ATTORNEY-GENERAL.—Yes, it is; he is removed along with the two Mr. Heywoods and Mr. John Wood. Then Mr. John Wood says, at page 80, that he had been made a defendant by amendment, and he joins in the general answer, and says, "that since his appointment as one of the Trustees of the charity, he hath taken no active part in the execution of the said Trusts: that, in the future execution of the said Trusts, he is willing and desirous to act as this honourable Court shall please to direct." What misconduct is to be imputed to Mr. John Wood? Because since his time there has been no distribution of this charity among Unitarians whatever, and, even according to the showing of the Relators, there has been no misapplication of it; and he says, as to the future he is perfectly willing respectfully to abide the directions that the Court may make.

My Lords, there was an amendment of the Bill and amended answers; but it is not material that I should now trouble you with them. Evidence was given, and, my Lords, I complain of that evidence being admitted and being acted upon; because I shall submit to your Lordships that it was the office of the learned Judge, before whom this came, to look at the deeds, so carefully and technically prepared, and to put a construction upon those deeds, without at all travelling into evidence *de hors* the deeds. But there was a very great body of evidence for the purpose of shewing, what I should not at all have complained of, namely, the meaning affixed to particular words at a particular time; that would be perfectly legitimate; nor should I at all have objected to the evidence of usage, which might be evidence to shew in what sense the words were used at the time the deed was executed: but what I do complain of is this, that a great body of evidence was admitted and was acted upon, both by the Vice-Chancellor and by my Lord Lyndhurst and the two learned Judges who assisted him, with a view to shew in what sense Lady Hewley used particular words. That is what I complain of. I say you may go into evidence with regard to ancient documents, with regard to the sense in which particular expressions were used at a particular time, but that you cannot go into evidence, be the deed ancient or be it modern, to ascertain in what sense the words were employed by the person by whom the deed is executed.

Lord BROUGHAM.—You can give evidence most legally and strictly of the circumstances in which the party making the deed was, by way of inferring therefrom the meaning of the deed.

Mr. ATTORNEY-GENERAL.—I apprehend that whether it be the deed of A, or the deed of B, or the deed of C, where there is no patent ambiguity, that you cannot at all travel into extraneous evidence.

Lord BROUGHAM.—You can give evidence as to the circumstances in which the party was who made the deed.

Mr. ATTORNEY-GENERAL.—You may shew the circumstances under which the party makes the deed; for example, you may shew how many children the testator had, you may shew how many sons and how many daughters he had.

Lord LYNDHURST.—Was there any objection made to the reception of the evidence before the Vice-Chancellor? This case came, I believe, three times before the Court. It was heard by the Vice-Chancellor; it was afterwards heard before the learned Lord who has just addressed the House; and it was afterwards heard before me. The same evidence was received upon each occasion, and I do not recollect, when it was heard before me, that any objection was made.

Lord BROUGHAM.—I have no recollection of any objection taken before me to any evidence at all; but Mr. Baron Parke is going to look at his note.

Mr. ATTORNEY-GENERAL.—I will state to your Lordships how it was. There was an immense body of evidence given, and there was an arrangement come to that it should all be read, that the Relators might read what they pleased *de bene esse*, and that then that which was not evidence was to be considered as the speech of counsel.

Lord LYNDHURST.—That is a course that never could be pursued, because that would leave it for the party to determine what is evidence, without any objection on the part of counsel and without argument. It never could have been the case. It may have been an arrangement among the counsel, but that is not the way to deal with the Court.

Mr. KNIGHT BRUCE.—Personally, I have not the least recollection of any such arrangement or agreement. I do not deny it, but personally I have no recollection of it.

Mr. ATTORNEY-GENERAL.—I can shew by most distinct evidence that the arrangement was come to when it was heard before the Vice-Chancellor. Then when it came on before my Lord Brougham, afterwards before Lord Lyndhurst, it was necessary that the same arrangement should be carried into effect, and that it should be heard upon the same basis before their Lordships, as it had been before his Honour the Vice-Chancellor.

Lord BROUGHAM.—Then it would have been highly convenient and fair to the Court, that the arrangement should have been disclosed; and I am sure it never was disclosed.

Mr. ATTORNEY-GENERAL.—I presume, upon the part of the defendants, that there having been that arrangement, it was not thought they could depart from it.

Lord LYNDHURST.—If the parties allow that to be read in evidence which in strictness is not evidence, by an agreement between themselves, and if no objection is made to the evidence that is offered, the Judge gives his opinion upon the effect of the evidence.

Mr. ATTORNEY-GENERAL.—If it was read in evidence, and if it ought not to be an ingredient in the judgment of the Court, I say, with very great respect and with great confidence, that that judgment was erroneous if it proceeds upon that evidence. Suppose facts are stated in a special verdict which ought to have no influence upon the judgment of the Court, it is quite immaterial that they are stated. You are to take it *pro non scripta* for this evidence.

Lord LYNDHURST.—Suppose evidence is offered at Nisi Prius, and an objection is made to it, and the party says, I waive any objection, and the Jury find a verdict upon that, and an application is made for a new trial, will not the Judge say, You waived your objection?

Mr. ATTORNEY-GENERAL.—Supposing there to have been an objection taken to the competency of a witness, and that is waived, you cannot then move for a new trial upon the ground that the witness was incompe-

tent. You are to take as a fact what the witness has proved. But supposing that what the witness has proved, being taken as a fact, is a fact wholly irrelevant, then it ought to be no ingredient in the verdict of the Jury, and no ingredient in the judgment of the Court.

Lord BROUGHAM.—That does not go to the admissibility, but to the effect.

Mr. ATTORNEY-GENERAL.—It goes to the effect; and my objection remains to me untouched, even supposing that this evidence had been read, and read without objection, or that the Judge upon argument had decided that the Relator was entitled to read it.

Lord LYNDHURST.—If facts were proved that were irrelevant to the issue, of course they ought to be rejected.

Mr. ATTORNEY-GENERAL.—They ought to be rejected; and I say deny that it was established that Lady Hewley was a Trinitarian. But I will assume, for the sake of argument, that it was proved most distinctly that she was a Trinitarian.

Lord WYNFORD.—You cannot deny that there was very strong evidence that she was a Trinitarian.

Mr. ATTORNEY-GENERAL.—There is evidence both ways. The very recommendation of Bowles's Catechism, in which the doctrine of the Trinity is not taught, is some evidence to shew that she was not a Trinitarian.

Lord LYNDHURST.—The evidence of her being a Trinitarian was received without objection. The next question will be, whether the conclusion from the evidence that she was a Trinitarian was correct; and if it was correct, then, what application that has to the question in issue?

Mr. ATTORNEY-GENERAL.—As to Lady Hewley being a Trinitarian, I say there was some evidence to shew that she was not a Trinitarian, and that is her preference of Bowles's Catechism: for the Catechism that was chiefly in vogue among Dissenters then, was the Catechism I was first taught, that is, the Shorter Catechism of the Assembly of Divines at Westminster, which is certainly a most beautiful compendium of Calvinistic Divinity.

Lord BROUGHAM.—But Trinitarian.

Mr. ATTORNEY-GENERAL.—Decidedly. There is a question, "How many persons are there in the Godhead?" I dare say the noble and learned Lord is well acquainted with the answer to the question.

Bishop of LONDON.—You admit that it is Calvinistic.

Mr. ATTORNEY-GENERAL.—Yes, I think that in Bowles's Catechism the doctrine of Original Sin is taught, and the doctrine of the Atonement, but not the Trinity.

Bishop of LONDON.—You said Calvinistic. Do not the points usually called Calvinistic imply a belief in the doctrine of the Trinity?

Mr. ATTORNEY-GENERAL.—I would not venture to enter for a moment into a discussion of such a point with your Lordship.

Bishop of LONDON.—It is notorious that it does.

Mr. ATTORNEY-GENERAL.—The doctrine of the Trinity being most distinctly taught in the Shorter Catechism of the Westminister Divines, and that being the Catechism that was then chiefly in use among the Dissenters in Lady Hewley's time, the preference that she gives to Bowles's Catechism, in which the doctrine of the Trinity is not directly taught, I humbly conceive would be evidence to shew that she was rather an Arian than a Trinitarian; because, speaking with the most profound deference and respect to the Right Reverend Prelate, I apprehend that Arians do believe in the doctrine of the Atonement, and even some Unitarians: for example, Mr. Firmin believed in the doctrine of the Atonement and Original Sin. So that it is no test of being Trinitarian or not Trinitarian that a person believes in the doctrine of Original Sin. And I believe that Jeremy Taylor, who believed in the Trinity, did not believe in Original Sin or the Atonement.

Bishop of LONDON.—Where have you learned that?

Mr. ATTORNEY-GENERAL.—I am not able to say. But to return to the course of my argument,—I say that Lady Hewley's deeds are not at all to be construed according to her private sentiments, according to the doctrine on the other side of the Bar. If I could have shewn by evidence that Lady Hewley was an Unitarian in her private belief, then all Trinitarians are to be excluded from the benefit of this charity. If I could have shewn that although she went to St. Saviour-Gate chapel, where Trinitarian doctrine was preached,—if I could have shewn by distinct evidence, which it is possible I might have been in a situation to do, that she said, Although it suits me to conform to the Presbyterian form of worship, and to be professedly a member of a congregation believing in the doctrine of the Trinity, still *I* do not believe in that doctrine,—I think that that doctrine is inconsistent with the Unity of the Supreme Being; I am an Unitarian, and my object in founding this charity was, not that Trinitarian, but that Unitarian, doctrine might be propagated: then, I say, according to the rule that is laid down on the other side, such evidence would have been admissible, and such evidence ought to have been acted upon. And now that Unitarian doctrine may safely and legally be propagated, it would be competent for a Relator to come and to say that it was an abuse of the charity to administer relief to any Trinitarian, that the Baptists and Independents ought entirely to be cut off, and that it should be confined exclusively to Unitarians, because Lady Hewley in her private belief and according to her heart and her conscience was an Unitarian, and not a Trinitarian. Such is the necessary and inevitable consequence of the doctrine for which my learned friends have to contend. I say, my Lords, that her will is to prevail, but it is her will as it is to be gathered from the language that she has employed in the deeds she has executed.

My Lords, this evidence being given after argument before his Honour the Vice-Chancellor, his Honour stopped the Reply, and he pronounced his Decree, which your Lordships will find, at page 32 of the Appellants' Case, "to declare that ministers or preachers of what are commonly called Unitarian belief and doctrine, and their widows and members of their congregations, persons of what are commonly called Unitarian belief and doctrine, are not fit objects of and are not entitled to partake of the charity."

Now, your Lordships see that that applies not only to preaching, but to eleemosynary relief, and that if this is to stand unreversed and unqualified, hereafter no relief can be given to an object, however destitute, who happens to be an Unitarian, or to entertain what are called Unitarian opinions; and that it would be necessary before administering a cup of water to a person dying of thirst, first to inquire into his religious belief, and to catechise him upon the doctrine of the Trinity, Original Sin and the Atonement. Your Lordships, therefore, observe, that what I have read applies to all the six objects of Lady Hewley's charity, including the fifth and sixth that I enumerated, just as much as the first, second, third and fourth.

Then, with regard to the Trustees, the Decree proceeds, "To remove all the defendants from being Trustees and Sub-Trustees or Managers respectively of the charity, and to refer it to the Master of the Court in rotation to appoint proper persons to be Trustees and Sub-Trustees or Managers thereof respectively, in the room of the defendants." Therefore, they are all removed, but not a syllable is said as to what shall be the qualification of those who are to be substituted. This applies, my Lords, to certain Trustees. It applies to the Trustees of the almshouse, including Mr. Palmes; it applies not only to Trustees, it applies also to the destitute who might receive necessary relief.

My Lords, against this Decree of his Honour the Vice-Chancellor, as his Honour, I may say, recommended, there was an Appeal to the Lord High Chancellor. Lord Brougham then held the Great Seal. That Appeal came

on to be argued before his Lordship in the month of June, 1834. There was a change in the Government before his Lordship had pronounced Judgment; and I observe Lady Hewley's case is always a signal for something remarkable happening in this respect.

Lord BROUGHAM.—Except when it is here.

Mr. ATTORNEY-GENERAL.—Here your Lordships are fortunately above all change, and being perpetual, no inconvenience can at all happen to the suitors at your Lordships' bar from any change, such as that to which I have alluded. And, perhaps, I might use the freedom of observing, if in your legislative capacity you were to enact, that where a case has been heard and argued before the Lord-Chancellor, he, going out of office, still should have the power to pronounce Judgment, as if he had retained the Great Seal, it would prevent a great deal of inconvenience, and it would be very much for the administration of justice in the Court of Chancery.

My Lords, on the part of the defendants whom I represent, there was an earnest desire that that might be done by consent, which I am humbly now suggesting for your Lordships' consideration ought to be done by law. We earnestly wished that my Lord Brougham while out of office should still decide this cause.

Lord BROUGHAM.—I offered to do it, to the best of my recollection.

Mr. ATTORNEY-GENERAL.—Your Lordship was quite willing to have done it; the unwillingness came from the Relators. The Relators withheld their consent, without which consent it was impossible that that course should be pursued.

Mr. KNIGHT BRUCE.—The argument was in an unfinished state when Lord Brougham resigned office.

Lord BROUGHAM.—I had heard it for four very long days, with Mr. Baron Parke and Mr. Justice Littledale, and had heard every thing but the Reply. Sir Edward Sugden's reply was to be heard, and that was all.

Mr. KNIGHT BRUCE.—We considered it not a waste of time to reply.

Mr. ATTORNEY-GENERAL.—The case was exactly in the same state in which it was before Lord Lyndhurst, when his Lordship left office, and there a different course was pursued.

Lord KENYON.—I would suggest whether the counsel at the bar should not confine their argument to the case before your Lordships, without going into the question of whether the law as it exists is right or wrong.

Mr. ATTORNEY-GENERAL.—I should be exceedingly sorry to do any thing irregular, but I insist, with great respect, that all that I have done I have an undoubted right to do, which is to state the course of proceeding.

Lord KENYON.—I do not allude to what the counsel is saying with respect to the course of proceeding; but the counsel at the bar suggested that if a cause has gone on to a certain point when the Lord-Chancellor resigns office, that an alteration should be made in the law, to allow the Judge removed to decide the cause. I do not think that is what ought to be stated when your Lordships are sitting here judicially.

Mr. ATTORNEY-GENERAL.—I said that in a parenthesis five minutes ago. I acknowledge that, strictly speaking, that is not a legal argument; but I thought that I might be pardoned, and that I had been pardoned, for incidentally making that remark, which I did with the greatest respect to your Lordships and to every member of your Lordships' House. I hope I shall not say any thing in the remotest degree disrespectful to this House or to any member of it. My Lords, the argument was precisely in the same state in my Lord Brougham's time as it was in my Lord Lyndhurst's.

Lord LYNDHURST.—I think I heard the Reply in some form.

Mr. ATTORNEY-GENERAL.—No, the Reply was waived. In April 1835, your Lordship heard the case argued for several days, with the assistance of Mr. Baron Alderson and Mr. Justice Patterson. Then, before Judgment had been given, there was a change of Government, and Lord Lynd-

hurst resigned the Great Seal. Then the consent was given by the Relators that they before had withheld, and we on our part were still perfectly willing to confide the cause to the noble and learned Judge. We repeated our entire confidence in that noble and learned Judge—we were perfectly willing that it should be left to him. The Relators did consent, and in February 1836, his Lordship gave Judgment, simply, without any alteration or correction whatever, affirming the Decree of his Honour the Vice-Chancellor,—taking the ground, as I shall by and by use the freedom to shew to your Lordships, which had been relied upon by his Honour the Vice-Chancellor, which my Lord Lyndhurst adopted, and which is now relied upon by the respondents.

My Lords, at p. 42 of the Respondents' Case, you have the ground upon which the Decree proceeded, and upon which the Decree is now to be defended. The only reason, my Lords, in support of the Decree, is this—which your Lordships will find at page 42—because Lady Hewley, by whom the charity in question was founded, was a Trinitarian in belief and doctrine, the application of her charity to the benefit of ministers or preachers of what are commonly termed Unitarian belief or doctrine, and members of their congregations, was and is inconsistent with her design and intention. My Lords, that is the reason, and the only reason, alleged on the part of the respondents. All, therefore, turns upon the private doctrinal opinions of Lady Hewley; not upon the construction of the deed; not upon her regulations; not upon any thing that is to be considered as part of the foundation of this charity,—but upon her own private, individual opinions. And if it can be shewn, my Lords, that such is the law of the land, that where there are deeds so prepared and executed, you are not to construe those deeds according to what appears upon the face of the deeds, but you are to travel into parole evidence to see what was the private opinion of the party who executed those deeds, there may be some reason for my learned friends to contend that this Decree is to be affirmed; but that fails, unless they can shew to your Lordships that the private opinion of the Founder is to be regarded, and then it would be open to me to have shewn that she was an Unitarian, or belonged to any other religious sect; that she was secretly a Papist, for that was not uncommon at that time; Charles the Second himself professed to be a Protestant, although in reality he was a Roman Catholic, as it appeared upon his death-bed. Well, my Lords, it would be open to me to shew that Lady Hewley was reconciled to the Catholic Church, and received extreme unction, and that that had been always her belief, and that therefore this charity shall be confined, as far as the law will allow, to persons who profess the Roman Catholic faith.

My Lords, my first proposition in point of law is this—that this evidence ought not to have been admitted, or, if admitted, that it ought not to be acted upon; and that it is a foundation upon which the Decree cannot rest. I submit to your Lordships, that the will of the Foundress which is to prevail is to be gathered from the language which she employed in executing the deed. Now, my Lords, this is not an executory instrument; this is not a case in which an application is made to a Court of Equity to carry into effect by a deed the half-expressed intention of the Foundress; but the Information proceeds upon the grounds that the deeds constitute a charity; and, as I submit, they are the only foundation upon which the Decree can rest. If, according to the just construction of those deeds, Unitarians are excluded, why then, as far as preaching is concerned, the Decree may be affirmed. But, my Lords, unless it can be shewn by a perusal of these deeds that Unitarians are excluded, they are entitled, with other sects of Christians, to partake of the bounty of Lady Hewley.

Now, my Lords, I will only remind your Lordships of a very few authorities, because the books abound with them, in which it has been held as a general rule, that you cannot enter into any evidence of intention out of the

ı instrument—that the written instrument must speak for itself. That ied not only to contracts, it is applied to lost wills, and above all, it ied to deeds. Here you have deeds that are carefully prepared and e regularly executed. My Lords, I will just refer you to a very few many cases that may be adduced upon the subject. In the case of ıge r. Goodinge, which is to be found in 1st Vesey Senior, page 231, ras a legacy to "such of the testator's nearest relations as the execu- ould think poor and objects of charity." Lord Hardwicke rejected ce as to what was the testator's intention. Now your Lordships see ıe private doctrines of Lady Hewley are to be inquired into merely to her intention; and if you would reject evidence by which you would ıe her to say, I meant that the Trinitarians only should participate in unty, *à fortiori*, you will reject evidence, or not act upon evidence, merely seeks indirectly to get at the same result, because this is sup- to be a declaration of her secret sentiments; and if her expressed sen- s should be rejected, all the evidence to get at that must share the ate.

l BROUGHAM.—When I spoke of evidence being admitted of the ents of the party, it was not for the purpose of shewing what she ; for the question is not what she meant, but what she has told you ant. But to understand an instrument, evidence is admitted of the f the family, always supposing that there is no latent ambiguity; if s a latent ambiguity, of course that is different.

ATTORNEY-GENERAL.—Yes, my Lord; if the testator leaves to phew John, and he has two nephews John, then *ex necessitate* evi- is admitted.

l BROUGHAM.—That is not a latent ambiguity.

ATTORNEY-GENERAL.—No, my Lord; you must admit evidence ıove that ambiguity. It is introduced by evidence, and you must e it by evidence.

Lords, Lord Hardwicke in this case says, evidence cannot be allowed ıew that the testator meant to use general words in this or that parti- ense, nor can it be read to shew that the testator was offended with e and said he should not be included in the number of relations."

y Lords, how this applies. Here is a legacy to such of this testator's t relations as the executors shall think poor and objects of charity. ly Hewley's case, you have a conveyance to Trustees for such persons Trustees shall judge to be preachers of Christ's holy Gospel. Well, rhat was the meaning of those words? Lord Hardwicke would not evidence to be given to shew what the testator meant by his nearest ns, when he said such of his nearest relations as his executors should poor and objects of his charity. Upon the same principle, evidence to be allowed to shew whom Lady Hewley meant by the declaration s made with respect to "poor and godly preachers, for the time of Christ's holy Gospel," any more than evidence would be admitted r who were to be considered as the nearest relations of the testator.

n, my Lords, in Edge r. Salisbury, which is in Ambler, page 70, there bequest in these terms—to "such of my nearest relations as my exe- shall think the greatest objects of charity." Evidence was tendered r that the testator meant to comprehend first cousins, but Lord Hard- refused it, and these are the words of Lord Hardwicke—"because it be to construe words which of themselves carry a meaning;" that is, nit extraneous evidence to shew what was the sense in which the were spoken by the persons who used them, which is never to be ed.

Lords, in Green r. Howard, which is in 1st Brown's Chancery Cases, l, there was a legacy "among such of my relations as shall be living wife's death." Lord Thurlow refused to admit parole evidence to

shew that the testator received second cousins with equal kindness with the first. Lord Thurlow says, "The sense of the words, as fixed by legal authority, is not to be altered by the language held on any occasion by the testator or by his behaviour. There is no particularity in this will to alter the sense of the word *relations*."

My Lords, there are innumerable cases in which the same rule has been applied to the construction of wills. I will merely refer you to a late case, which your Lordships will all recollect, Doe, on the demise of Sir Arthur Chichester, *v.* Oxenden, which is in 3rd Taunton, page 347, and this House, 4th Dow, p. 72. There the testator demises his estate of Ashton; he had an estate which he always called his Ashton estate, and the question was, whether the demise should be confined to that part of his Ashton estate which was in Ashton, or whether it should be extended to all his estate. There was part only of the Ashton estate in Ashton. Parole evidence to shew that the testator meant the whole estate, was rejected. The words which he used carrying a sufficient meaning, all parole evidence to shew the sense in which he used those words was rejected; and Lord Chief Justice Gibbs lays down the general rule, that evidence of intention is admitted only where there is latent ambiguity; that is, where the parole evidence shews the ambiguity, by that same parole evidence the ambiguity may be removed.

My Lords, I will only remind your Lordships of one other case, of Nicholls *v.* Osborn, which is in 2nd Peere Williams, page 421, where it was held, that as plate passes by the bequest of household goods, you cannot give parole evidence that this was not the intention of the testator. Now here is a legacy of all household goods; the question is, shall plate pass? That depends upon the will of the testator. But how is that will to be gathered? Why, it is to be gathered from the language employed in the last testament of this individual, and that language was, "all my household goods." Well, then, are you to enter into his private belief as to what he usually intended by the words "household goods"? Are you to admit evidence to shew that he always said, When I say household goods, I mean exclusive of plate, and I think plate ought always to go to the next heir, or as an heirloom to the heir at law? My Lords, if the private opinion, if that which is in the mind of the person who executes the will or deed, is to be received in one case, it must be received in all. The general principle for which, on the other side, they must contend is this—that, in the best way you can, you are to get at the sense in which the words were used by the individual. Now that is what I most strongly combat. I say, you are not to get at the sense in which the words were used by the individual, when there is no latent ambiguity, but to look at the language employed, and put upon that language its just and legal and natural interpretation.

That being so, my Lords—rejecting as, I say, your Lordships are bound to reject, any evidence respecting the private belief of Lady Hewley, the question that now arises is, what construction is to be put upon the deeds; and, looking at those deeds, does she exclude all persons who are of Unitarian opinions? Does she exclude all persons of Unitarian opinions from having any of her bounty as to preaching? Does she exclude them with regard to eleemosynary relief? Does she exclude all such persons from being her Trustees? Now, my Lords, I should first beg permission to consider that question of construction without regard to the statute law, and afterwards to consider what effect upon this construction is to be given to the statutes that were in force and that have since been repealed. But, first, let me suppose that there were no statutes upon the subject; that those deeds are to be construed as if they were deeds executed at the present time, since the 53rd of George the Third, when the statutes against persons impugning the doctrine of the Trinity were entirely repealed; and let me suppose that at the time when Lady Hewley executed those deeds

here had been no such statutes in existence. It becomes necessary that I hould, for this purpose, more minutely examine the language that she has mployed. First, my Lords, is there any thing in the deed of 1704 to exlude Unitarians; and, secondly, is there any thing in the deed of 1707 hich will at all affect the construction of the deed of 1704? The deed is et out at length in the 3rd page of our Appendix.

Lord BROUGHAM.—It begins at the 1st page.

Mr. ATTORNEY-GENERAL.—Yes, my Lord. The part I am going o refer your Lordships to is page 3. I believe you will find the deed faithlly extracted at pages 1 and 2 of the Appellants' Case. My Lords, she ays that the Trustees, after payment of certain charges and expenses, shall ut of the residuary rents and profits pay such sums of money yearly, or therwise, "to such and so many poor and godly preachers, *for the time eing*,"—words that will become very material hereafter,—"of Christ's holy ospel, and to such poor and godly widows, *for the time being*, of poor and odly preachers of Christ's holy Gospel, at such time or times, and for so ong time or times, and according to such distributions, as the said Trustees nd Managers for the time being, or any four or more of them, shall think it; and employ and dispose of such sums of money, and in such manner, or the encouraging or promoting of the preaching of Christ's holy Gospel n such poor places as the said Trustees and Managers for the time being, r any four or more of them, shall think fit; as also employ and dispose of uch sums of money yearly, or otherwise, as and for exhibitions for such or o long time or times, for or towards educating of such young men designed or the ministry of Christ's holy Gospel, never exceeding five such young nen at one and the same time, as the said Trustees and Managers for the time eing, or any four or more of them, shall approve and think fit." And, as to ll the remainder of the residuary rents and profits of the premises, that the aid Trustees should "employ and dispose of the same in and for the relieving f such godly persons in distress, being fit objects of the said Dame Sarah Iewley's and the Trustees' and Managers' charity, as the said Trustees and Ianagers for the time being, or any four or more of them, shall think fit." Now, my Lords, what is there here to exclude Unitarians? What is there to equire that the objects of her bounty should believe in the doctrine of the Triity, or in the doctrine of Original Sin and the Atonement? What is there ere, looking merely at the face of the deed, to require that that should be a ualification? The words are as to preaching, "poor and godly preachers, for he time being, of Christ's holy Gospel." If it shall be said that Unitarians re not preachers of Christ's holy Gospel, that they are not to be consilered as Christians, that they are liable to be now at common law indicted s denying the Christian religion,—of course they would be excluded: but, n the contrary, if I shall be able to shew your Lordships (which I think I hall do most satisfactorily), that although, unfortunately, they do not elieve as we do in those holy doctrines, they have been considered as hristians, and are treated as Christians, and are to be comprehended in he term, "Preachers of Christ's holy Gospel,"—then they are to be inluded instead of being excluded.

My Lords, a question has been made, whether the clergy of the Church f England might not be included in this description of "Preachers of Christ's oly Gospel"? My Lords, I think that they are not, and for this reason, hat at the time that Lady Hewley executed that deed, it appears that this as the mode of describing Nonconformist ministers; and if it had not been or that, there is no doubt that the clergy of the Church of England would ave been included.

Lord LYNDHURST.—The expression is, Poor and godly preachers of hrist's holy Gospel.

Mr. ATTORNEY-GENERAL.—Yes, my Lord. I believe that is the erm that marks out Nonconformist preachers.

Lord BROUGHAM.—You are speaking now of the deed of 1704, a period of time when that was not the language used; she uses the language used forty years before.

Mr. ATTORNEY-GENERAL.—That was a well-known phrase, when speaking of Nonconformist ministers.

Bishop of LONDON.—When used by a Nonconformist.

Mr. ATTORNEY-GENERAL.—I should say, with great deference to the Right Reverend Prelate, used by any person at that time. It is not very likely that a Churchman would use that language; but if such language had been used by a Churchman, I apprehend that if the Churchman had said that he left such and such a sum of money for the Established Clergy of the Church of England who conform and sign the Thirty-nine Articles, and that he left another sum of money for "poor and godly preachers, for the time being, of Christ's holy Gospel," with great deference to the Right Reverend Prelate, I apprehend there could be no doubt that the same sense must be put upon the words in his mouth, as would be put upon the words in the mouth of a Nonconformist.

Bishop of LONDON.—But the Attorney-General has put an impossible case.

Mr. ATTORNEY-GENERAL.—Really, my Lord, I should very much doubt whether that is an impossible case. I believe that there are many who sincerely believe in the doctrines of the Church of England, and are most affectionately attached to that Establishment, most devotedly attached to that Establishment, who yet, my Lords, would not withhold their assistance from other denominations of Christians.

Bishop of LONDON.—That is not the point. The question is, whether a member of the Established Church would use the words "Godly minister," to distinguish a Nonconformist minister from a member of the Established Church.

Mr. ATTORNEY-GENERAL.—I might say those who are commonly called "poor and godly preachers."

Bishop of LONDON.—That is quite a different case.

Mr. ATTORNEY-GENERAL.—But I apprehend, in point of law, the same interpretation is to be put upon the language, where the language is clear and precise, being used by a member of the Church of England, as if used by a Dissenter. But, my Lords, it was in evidence, and I think there can be no doubt of the fact, that in Lady Hewley's time those who were generally called "poor and godly ministers" were Nonconformists; and I do not at all object to evidence to shew what was the sense put upon the particular phrase at the particular time: but I say, when we come into a Court of Justice, that the same interpretation is to be put upon it by whomsoever framed; and it would introduce the strangest confusion if the construction of deeds were to be affected by shewing what were the private sentiments and intentions of those by whom the deeds were executed. But, my Lords, supposing that the clergy of the Established Church of England are excluded, as I apprehend they are by the language that is employed, what is there to shew that Unitarians are excluded, when I prove, as I shall, that at that time they were considered as "preachers of the Gospel," and as sincere Christians, to be acknowledged by their orthodox brethren? But then, my Lords, what is there to shew that those are not to partake of this bounty as being destitute and objects of charity? Why was their faith, their particular faith, to be inquired into? The language with regard to them is this, "such godly persons in distress, being fit objects of the said Dame Sarah Hewley's and the Trustees' and Managers' charity." Well, then, the only qualification that is required is, that they should be godly persons in distress; and shall it be said, my Lords, that a person may not be a godly person in distress, because, being a sincere Christian, he does not believe in Original Sin, or in the doctrine of the Atonement?

l WYNFORD.—They are to repeat the Creed.

ATTORNEY-GENERAL.—No, my Lord; if you will examine the cations of the category, there is no Creed required. That applies to ıshouses. There is nothing about the Creed till we come to the deed of ıor in that deed is there a word about the Creed; but in the *Regulations* he almshouses, confined merely to the almshouses, there is a regula- at the inmates shall repeat the Lord's Prayer, the Ten Command- the Apostles' Creed and Bowles's Catechism. There is a qualification d with regard to being admitted into the almshouses, but there is no cation as to being a participant of this bounty, except being a godly in distress. A godly person in distress, whatever his peculiar faith, , according to the will of the Foundress, as expressed in her deed, l to share in her bounty. But, by the Decree of the Vice-Chancellor, sons are excluded, however destitute and however godly they may be, they believe in the doctrine of Original Sin and in the Atonement. therefore, upon the other side to shew that no persons who, unfor- y for them, happen to disbelieve or to doubt that doctrine, although ay believe in the doctrine of the Trinity, although they may consci- ly repeat the Athanasian Creed, still they are to be excluded from pating in this charity, unless they likewise believe in Original Sin; t only shall preachers be excluded from it, according to his Honour's , but all destitute persons. My Lords, construing this deed by the ge employed with regard to preachers, all Nonconformist preachers e fairly to be considered as preaching the Gospel of Christ, are in- All destitute persons, at the discretion of the Trustees, who are persons and in distress, may lawfully be relieved.

, my Lords, is there any thing else in this deed of 1704 at all to limit ıstruction that I contend for? My Lords, the next paragraph is giving a preference, not to any particular sect, but to a particular : "— that whatsoever charitable dispositions or allowances by the ıme Sarah Hewley shall have been made to persons or places in York ıshire." They are to look chiefly to York and Yorkshire, and they continue certain benefactions which she had given, "until they, or them at the least, shall see just reason to discontinue, alter or deter- ıe same, or any of them respectively," and amongst others to this St. r-Gate chapel, which she had partly founded.

ı, my Lords, this deed, with respect to the appointment of Trustees, s that when any Trustee should die, the survivors should elect in his ıch a person as they in their judgment and consciences should think ow, she prescribes no qualification; she does not say that he shall be tarian, or believe in the Atonement, which she might easily have They are not to believe in her opinions, but simply this—that they ıe such persons as the Trustees whom she had named shall think fit. ıces unbounded confidence in the election of others. "And in case leath of any such new-elected Manager, to elect in like manner in his nother like Manager," without any qualification as to doctrine or but another person who should be approved of by the surviving ıs. And so, my Lords, the Trustees were successively to be elected ng to the judgment and good conscience of those who were then ıs Trustees.

, my Lords, if Lady Hewley had died after executing this deed of there any ground for saying that in construing that deed no persons be allowed to participate in her bounty, although they were Chris- ıd preachers of the Gospel, who did not believe in particular doc- Still more, my Lords, if she had died having executed this deed, : any ground for saying that those destitute objects for whom she o provide should have no benefit at all, unless they likewise believed cular doctrines?

I come now, my Lords, to the deed of 1707; and your Lordships will say whether that in the slightest degree alters the construction to be put upon the deed of 1704. The Trust here was, "That after the decease of the said Dame Sarah Hewley, the Trustees should permit the new-erected almshouse to be for ever used as a hospital for poor people, as the same now is, or at the time of the decease of the said Dame Sarah Hewley; and upon special Trust that the Trustees shall out of the rents and profits of the premises pay and discharge all costs and expenses whatsoever, which the said Trustees shall be put unto, concerning the reparation of the premises or the lands or profits thereof, in providing Catechisms for the poor people of the hospital, or in performance of the Trusts hereby declared, or the management of the Trust estate; and that the Trustees shall out of the rents and profits of the said premises buy and raise yearly the full and clear sum of sixty pounds, and dispose of the same for the benefit and support of the poor people of the place, or which the Trustees shall from time to time elect or put into the hospital or almshouse, in such proportions and at such times and for such purposes and intents as the said Dame Sarah Hewley hath appointed, or at any time hereafter during her life shall appoint, in any writing signed by her; and that the said Trustees and Managers for the said time being, or any four of them, should after her decease fill up and place to the number of ten poor persons, qualified according to the said Rules, in such hospital or almshouse; whereof nine——," now here is a qualification required of the widows that were to be placed in the hospital——"whereof nine to be always poor widows or unmarried women, so long as they should continue such persons, being of the age (each of them) of fifty-five years or upwards; and the tenth person to be a discreet and pious poor man, who may be fit to pray daily twice a day, every morning and evening, with the rest of the poor in the almshouse, if such a man can be conveniently found; and in default thereof, the tenth to be a poor woman qualified as the other nine. And the Trustees shall pay to each of the said poor persons ten shillings upon the first day of every month of every year." Now, my Lords, there is nothing here at all to restrain the Trustees from placing in this almshouse any Christian persons whom in their discretion they might select. There is a qualification with regard to age, there is a qualification with regard to moral character, but none here with regard to religion. There is one, by and by, most undoubtedly, that I shall bring before your Lordships' notice when I come to the Regulations which Lady Hewley established. I am now upon the deed. With regard to those Trustees she provides, that when any of them should die, during her life and after her death, in default of her nomination, the survivors of the said Trustees shall elect in the room of every deceasing Trustee such person of reputation as they should approve of. Therefore, she still places unbounded confidence in the Trustees, imposes no qualification upon their successors, but leaves it to the judgment and conscience of those whom she originally appoints. The deed then declares, "That the Trustees shall, after the death of the said Lady Hewley, be the only Visitors and Governors of the hospital; and that they, or any four of them, shall have and use the sole power and jurisdiction to govern, admit into or expel from the said almshouse all such poor persons as are already or may hereafter be admitted into or placed in the same, pursuant to such rules or orders," &c. Then the residue of the rents is directed to be applied by the Trustees in such manner as is directed by the deed of 1704.

Now this is very material for your Lordships to bear in mind, that after the almshouse is provided for, all the residue is to go for the same purposes exactly as were provided for by the deed of 1704, and she does not alter that deed in the slightest particular; but by an indorsement on the deed of 1707, it is provided that the management of the hospital, as to the putting in of a poor woman upon any vacancy, shall be in the power of Thomas Colton and

who are there called the Grand Trustees: "—should at the beginning
ı year leave the monies in their hands for paying the monthly allow-
r the year ensuing, and to pay what is necessary for repairs and re-
g," &c. Now, my Lords, here you have the functions of the Sub-
es defined, of whom Mr. Palmes is one, and those functions, my Lord,
ıply to put in a poor woman upon a vacancy; and Mr. Palmes, being
ber of the Church of England, is removed and thought incapable of
as a Trustee in selecting a poor woman to be put into this almshouse
vacancy.
ı, my Lords, there are certain Rules which Lady Hewley lays down,
are material for your Lordships' consideration. The first are enti-
Rules and Orders to be observed by the said Trustees and the major
'them," which do not in any respect, that I am aware of, differ from
ove indentures which are set out. The second is, "Rules and Orders
observed about the Qualities or Qualifications of the Poor People
lected into the said Almshouse from time to time." Now, my Lords,
on this document, so far as the construction of the writings is con-
, by which the charity is founded, that the whole of the decision
and I do not at all dispute that this is to be taken into consideration.
part of the will of the Foundress. This is an instrument by which
arity was established and was to be regulated; and, although I deny
ht of my learned friend to go by parole evidence into her private opi-
I do not dispute for a moment that all due weight is to be given to
hing that is to be found upon the face of this document.
r what is that? I will read all that I consider material, and I will
ıy that my learned friend would wish me to bring under your Lord-
notice at this time. "Let none be elected into the almshouse
ath a clear personal estate of above sixty pounds, or a real estate
the annual value of three pounds above all reprizes, and near relations
e able in estate, and bound by the laws of God and Nature, to relieve
ıt home. Let all persons to be elected prove their age to be above
re, by good testimonials, if required. Let none be admitted into the
al that cannot be conveniently separated from their children, for their
n must not be permitted to live with their parents." That seems, my
to be a very material regulation. "Let none of evil fame or report
ıitted into the hospital, but such as are poor and piously disposed."
ere you have a qualification imposed upon the almswomen; they are
oor and piously disposed, "and of the Protestant religion"—not ex-
ly of the Church of England, nor excluding the Church of England.
would not be the slightest objection to the Trustees selecting a
r lady above fifty-five who was a devoted Churchwoman, and placing
this almshouse. She is to be piously disposed and to be of the Pro-
: religion. Roman Catholics would of course be excluded, but all
ious persons of the Protestant religion may be admitted, so that they
: to the test which is afterwards imposed upon them with regard to
ing the Apostles' Creed and Bowles's Catechism. "Let every alms-body
that can repeat by heart the Lord's Prayer, the Creed and Ten Com-
nents, and Mr. Edward Bowles's Catechism. Let all the alms-people,
ot disabled by weakness, duly repair to some religious assembly of the
tant religion, every Lord's-day, forenoon and afternoon; and at other
unities to attend the ordinances of God. Let every alms-body, morning
ening, in private devotion, commend themselves to God in prayer, and
r prayer remember the Founder, Sarah Lady Hewley, while she lives,
ter her death pray for her Trustees. If any of the alms-people shall
against any of these Rules relating to them, let them be admonished
r one of the Feoffees; and if that admonition prevail not, let them be
ished the second time; but upon the third transgression, it shall and
e lawful for the Trustees, or the major part of them, to remove and

turn out such disorderly persons, with their effects, and to choose another in their room." I believe these are the only material parts of those Regulations.

Now, my Lords, first, what effect have they with regard to the qualifications of the alms-women? Secondly, what effect have they upon the other objects of Lady Hewley's bounty? Now, with regard to the almswomen, I would admit at once that they must not only be able to repeat, but they must be able to repeat with a good conscience and with a pious belief, the Lord's Prayer, the Apostles' Creed, the Ten Commandments and Mr. Edward Bowles's Catechism. I allow, my Lords, as was said, I think, by a noble and learned Judge, that this is not to be considered as an exercise of memory, but a proof of faith. But then, my Lords, suppose that they are called to believe in all that is taught in the Lord's Prayer, in the Ten Commandments, in the Apostles' Creed, and, in addition to that, in Mr. Bowles's Catechism,—I say, my Lords, that all those, according to the interpretation put upon them by Unitarians, may piously, as far as the doctrine of the Trinity is concerned, be repeated, with a firm conviction of their truth, by those who would be excluded by the Decree of the Vice-Chancellor. My Lords, the Unitarians insist, and I believe sincerely, that they most piously believe in the Ten Commandments; they most piously repeat the Lord's Prayer; and I believe, my Lords, that they are perfectly willing to repeat the Apostles' Creed. Bowles's Catechism does not directly teach the doctrine of the Trinity. This is the Shorter Catechism of the Westminster Divines.

Mr. KNIGHT BRUCE.—You mean to use this as part of your case?

Mr. ATTORNEY-GENERAL.—Yes.

Mr. KNIGHT BRUCE.—I have not the least objection.

Mr. ATTORNEY-GENERAL.—This Catechism contains the question and answer: "How many Persons are there in the Godhead? There are Three Persons in the Godhead, the Father, the Son and the Holy Ghost, and these three are one God, the same in substance, equal in power and glory." In this Catechism there is the most comprehensive and natural compendium of the doctrines which it teaches, which is still the great standard of the Church of Scotland, and from which I hope it will never depart. This expressly teaches the doctrine of the Trinity. In Bowles's Catechism, which was much less known at that time, and which must have been preferred after the Shorter Catechism had been rejected, although the doctrine of Original Sin and the Atonement appear to me—I speak of course with great diffidence upon such subjects—to be distinctly taught, the doctrine of the Trinity is not to be found, and I apprehend that any Unitarian might with a good conscience repeat Bowles's Catechism.

Bishop of LONDON.—An Arian, not an Unitarian.

Mr. ATTORNEY-GENERAL.—If your Lordship includes in Unitarian a disbelief in Original Sin and the Atonement, I think an Unitarian could not; I never will stand here to contend for that which I cannot in my conscience support. I have read Bowles's Catechism very carefully, and I own that it seems to me that it teaches very distinctly both the doctrine of Original Sin and the Atonement; therefore, if Unitarians disbelieve in those doctrines, an Unitarian cannot repeat it as a proof of his faith; but still, my Lords, an Arian might, because the doctrine of the Trinity is not there to be found: but it is part of that which is contended for on the other side of the bar, and it is an ingredient in the Decree of his Honour the Vice-Chancellor, that any person that disbelieves the doctrine of the Trinity is excluded, because it is in the conjunctive; he must believe in the doctrine of the Trinity, he must believe in Original Sin, he must believe in the doctrine of the Atonement; and unless he believes in all these, he is excluded.

Now, my Lords, conceding that Lady Hewley requires that the almswomen should believe in Original Sin and the Atonement,—by requiring

ey should repeat Bowles's Catechism, she does not require that they believe in the doctrine of the Trinity; and it might well be that ıight be an Arian who believes in the doctrine of Original Sin and ɔnement, but does not believe in the doctrine of the Trinity, who ɔe entitled under Lady Hewley's Regulations, but who is excluded by cree of the Vice-Chancellor; and therefore, my Lords, admitting that shall be allowed to enter this almshouse, who does not piously and ntiously believe those holy doctrines of Original Sin and of the Atone- till there is nothing to be found in Lady Hewley's Regulations, in- upon Bowles's Catechism, that would exclude an Arian. And we ny Lords, that at that time the Arian heresy had made great progress, Arian is as little a Trinitarian as an Unitarian. He denies the ɤ of our Saviour, just as much. An Arian most undoubtedly believes, believes, that our Saviour had pre-existence, that he existed from ɔnity, but he denies that he is God. An Arian denies the divinity Saviour: there are many degrees of Arianism; there are some who t the second person in the Trinity is of like substance with the Fa- ıey are not considered as orthodox.

LYNDHURST.—The Decree is simply this, to declare that minis- preachers of what is commonly called Unitarian belief and doctrine, eir widows and members of their congregations, and that persons of commonly called Unitarian belief and doctrine, are not fit objects of ırity.

ATTORNEY-GENERAL.—Then, my Lord, what are commonly Unitarian preachers are those who do not believe in the doctrine of inity, who are Christians, who believe in the divine mission of our r, who believe that the Scriptures contain the revealed will of God, ıey inform us of a future state of existence, and that we shall be re- or punished according to our conduct in this life; that we are table, and that our future fate will depend upon our present conduct; ɔ do not believe in the doctrine of the Trinity, who do not believe in trine of Original Sin, who do not believe in the doctrine of the Atone- And persons entertaining what are commonly called "Socinian" ıs are such as I have described. Therefore any person who is an Arian most undoubtedly be excluded, although that person might believe doctrine of Original Sin and in the doctrine of the Atonement.

op of LONDON.—Not by the words of the Decree.

ATTORNEY-GENERAL.—With great submission, by the Decree; e the Decree refers to what are usually called Trinitarian opinions. hole Information, my Lord, proceeds, as I will point out to your ıip distinctly if it be necessary, upon this. The objection made to Trustees is, that they do not believe in the doctrine of the Trinity, ıey do not believe in Original Sin, that they do not believe in the nent; it is not what they do believe in, but what they do not believe l the Arian just as little believes in the Trinity as the Unitarian does.

op of LONDON.—Does he as little believe in the Atonement? ı the point.

ATTORNEY-GENERAL.—He may, or he may not; some Arians ıer Arians do not.

op of LONDON.—Therefore they are not excluded by the Decree.

ATTORNEY-GENERAL.—I am now, my Lords, upon the point, ıre the fit objects to be admitted into the almshouse? which is of an inferior branch of the case. But, my Lords, as far as the Decree say that any old woman is to be excluded from this, if she disbelieves Trinity, if she disbelieves in Original Sin, if she disbelieves in the nent, although she may believe in every other doctrine of the Chris- ligion, and may be most exemplary in her life and conversation.

then, my Lords, comes this much more important question, What

effect has this upon the other categories in which are included the objects of Lady Hewley's bounty? Because, if it were conceded, for the sake of argument, that none but Trinitarians are to be admitted into the hospital, does it necessarily follow that none but Trinitarians shall be allowed to preach and to participate in her bounty? Still more, does it follow that none but Trinitarians in distress may be relieved from the fund which she has provided? For to that extent my learned friends must go, to support the Decree of the Vice-Chancellor. What ground, my Lords, is there for saying, that because Lady Hewley, in regulating this almshouse, said that the almswomen should submit to a certain form of worship, that Lady Hewley would not tolerate any other? My Lords, there was an obvious reason why she should wish that all who were admitted into this hospital should be of the same creed; they were to spend the rest of their lives together; they were twice a day, morning and evening, to celebrate divine worship together,—"let every alms-body morning and evening in private devotions commend themselves to God in prayer, and in their prayer remember their Founder." And, I think, there are Regulations respecting the service being read in public. It is provided that the tenth person, who shall be an old man, shall act as chaplain, that he shall pray with them, and in the absence of an old man who was to perform this service, a woman was to act as priest. Well, my Lords, as there was to be this worship in the hospital, it was very material that all who were admitted into the hospital should be as nearly as could be of the same religious faith, that there might not be brawling and disputation and controversy and feuds created among them. It was, therefore, a very natural thing that she should require that those who were admitted into the hospital should submit to a particular test: the test she appoints is the Creed, the Ten Commandments and Edward Bowles's Catechism.

My Lords, this strengthens the argument with regard to the other categories in which are included the other objects of her bounty, because it shews that she knew how to apply a test. She applies a test with reference to the almswomen; how easy would it have been for her to say, that none should be allowed to receive her bounty, who were to preach, unless they would repeat the Creed, the Ten Commandments and Mr. Edward Bowles's Catechism; or, my Lords, it would have been still more easy if she had said, they being Trinitarians, or answering the description of orthodox Dissenters; but she says no such thing; she only says they shall be "godly preachers of Christ's holy Gospel;" and the question that your Lordships have to determine is, whether within that description a person may not come, although he may not be a believer in the Trinity?

There is, therefore, my Lords, nothing in the deed of 1707, there is nothing in the Regulations that Lady Hewley signed in 1709, at all at variance with the construction that I seek to put upon the deed of 1704; and the question really does arise, my Lords, whether Unitarians may not come within this description of "godly preachers, for the time being, of Christ's holy Gospel"? If my learned friends can successfully do what they have attempted to do below, namely, shew that Unitarians cannot be so considered, then, my Lords, they will succeed. They do not come within that description which is to be found upon the face of the deed, and, therefore, upon my own premises, the inference is necessarily to be drawn against me. But, my Lords, I say that it lies upon them to shew that Unitarians are not to be considered as "godly preachers of Christ's holy Gospel;" because I say that all sects, all Nonconformists who are fairly to be considered as godly preachers of Christ's holy Gospel, are included. If they are included in the objects that have reference to preaching, *à fortiori* they are included in those objects that have reference to eleemosynary relief.

But, my Lords, if it is to be said that the onus is to be cast upon me to shew that they are godly preachers of Christ's holy Gospel, I am perfectly

willing to bear the burden; and for that purpose, having referred your Lordships to those passages of the Information in which the Relators themselves say that those Unitarians are Christians, I will refer you to an account that Mr. Wellbeloved gives of his faith, and upon which the respondents rely: that, my Lords, will be found in page 16 of the Respondents' Case. The respondents have set it out, and I read it from the Respondents' Case; and the respondents are to shew that persons who have this faith are not to be considered as Christians. Mr. Wellbeloved says, "That he uniformly represents himself and desires to be considered by others as a Protestant Dissenter of the Presbyterian denomination, and as one who firmly believes in the divine mission of Jesus Christ, and holds no other doctrines than those contained in Christ's holy Gospel; to all of which defendant yields a full and cordial assent." He admits it to be true that the sense———

Lord BROUGHAM.—What are you reading from?

Mr. ATTORNEY-GENERAL.—The Case of the Respondents, page 16.

Mr. KNIGHT BRUCE.—The Case for the Attorney-General.

Mr. ATTORNEY-GENERAL.—If my learned friend means by this interlocutory observation to say that the Attorney-General is not entitled to appear as counsel———

Lord BROUGHAM.—Oh no! there is no question about that; that has been settled by this House. Mr. Knight Bruce does not mean to raise that.

Mr. ATTORNEY-GENERAL.—I think my learned friend might have spared that observation. I appear here not as Attorney-General; I appear here as an advocate at your Lordships' bar, for the defendants in the Court below, the appellants in this House. My Lords, the Attorney-General, though his name is used, this Information being filed by the sanction of a predecessor of mine, may be counsel for the Relator, he may be counsel for the Defendant, he may appear as private advocate either in the Courts below, or in this Supreme Court, which decides in the last resort. My learned friend reminds me, as I have already stated, that this is not an Information filed by the Attorney-General, quo Attorney-General, for Sir James Scarlett refused to give that sanction to the proceedings; it is the private Information of Independent Relators.—Mr. Wellbeloved admits it to be true that, "in the sense in which defendant uses the term Unitarian, and which is hereinafter set forth, he is an Unitarian in his religious belief and doctrine. That, in using the term Unitarian as applicable to himself, he means more especially to denote that he believes and professes the following Christian doctrines." Now here are the doctrines which he professes and believes, and your Lordships are to say whether a man is not a Christian who conscientiously and honestly believes in these doctrines:—"That to know God to be the true God, and Jesus the Christ whom he hath sent, is eternal life: that it is defendant's duty to worship God, according to the precepts and the example of his divine Lord and Master, who taught his disciples to pray to God their Father in heaven, and to ask of him what they needed, in his name: that it is his duty to ascribe glory to the only wise God through Jesus Christ: that he acknowledges Jesus to be the Word that in the begining was with God, and rejoices in the doctrine of the Evangelist, that God so loved the world that he sent forth his only-begotten Son into the world, not to condemn the world, but that the world through him might be saved: that he believes that God, having sent him forth, was with him; that the works which he did and the words which he spake were not his own, but the words of the Father who sent him, and whose will he came to do: that he believes that Jesus Christ was, as he said of himself, a man who spoke the truth he heard from God, and as God commanded and instructed him, so he spoke. That defendant believes, according to the words of the Apostle Peter, that Jesus of Nazareth was a man approved of God by miracles and wonders and signs, that God did by him: that having been crucified and slain, God raised him from the dead and made him Lord and Christ; that

then he was glorified by God. That, in conformity with the doctrine of the inspired Apostle Paul, defendant acknowledges and believes in one God, the Father, of whom are all things, and one Lord, Jesus Christ, by whom are all things, and we by him : that there is one God, and one Mediator between God and men, the man Christ Jesus, by whom God hath reconciled us to himself; who was made sin for us that we might be made the righteousness of God in him; who gave himself for us that he might redeem us from all iniquity, and purify unto himself a peculiar people, zealous of good works. That defendant acknowledges Christ as the image of the invisible God, the first-born of every creature, in whom it pleased the Father all fulness should dwell; who was made a little lower than the angels, but for the suffering of death was crowned with glory and honour, that by the grace of God he should taste death for every man; that he was made in all things like unto his brethren, in all points tempted like them, yet without sin; and whom, having become obedient unto death, God highly exalted, giving to him a name above every name, that at the name of Jesus every knee should bow, and every tongue confess that Jesus Christ is Lord, to the glory of God the Father. That defendant believes that the purpose and grace of God was made manifest by the appearing of Jesus Christ, who hath abolished death and brought life and immortality to light through the Gospel: that in the day when God shall judge the secrets of men by Jesus Christ, he will render to every man according to his deeds. That to the before-mentioned doctrines of Christ and his apostles, defendant gives his unqualified assent; and that whatever is taught in Christ's holy Gospel concerning the existence, perfection and government of God, the person and the office of Christ, the terms of pardon and acceptance with God, the duties of life and a future state of righteous retribution, defendant gratefully and cordially receives and professes as Divine Truth."

Are your Lordships to believe that Lady Hewley considered a person entertaining these doctrines not to be a Christian—not to be a godly preacher of Christ's holy Gospel? My Lords, it is material to know how persons of great eminence, and whose opinion was likely to sway much with Lady Hewley, did view persons entertaining those opinions and doctrines; and therefore, my Lords, with your Lordships' permission, I will read a few extracts from works that were much read in Lady Hewley's time, and I hope never will be forgotten.

My Lords, I will begin by reading to your Lordships an extract from the prose writings of John Milton, his "Tract on True Religion, Heresy, Schism and Toleration."

Bishop of LONDON.—Is it in the Appendix?

Mr. ATTORNEY-GENERAL.—It is not in the Appendix which is published, but we can easily furnish it to your Lordship.

Bishop of LONDON.—I merely asked the question.

Mr. ATTORNEY-GENERAL.—Your Lordship will not find it there. This tract was published by him after the Restoration, in the year 1673, at the time when Lady Hewley had reached woman's estate and was in the flower of her age. It is at page 43 of a compendium from which I am furnished with very copius extracts from the writings of that period. We can hand in to your Lordships copies, which might be convenient, of those extracts.

Mr. KNIGHT BRUCE.—In the edition of 1719, a separate edition of this tract, it is in page 7.

Mr. ATTORNEY-GENERAL.—It would be most convenient if your Lordships would allow us to hand in the copies which are prepared for the use of your Lordships and my Lords the Judges.—"What! are Lutherans, Calvinists, Anabaptists, Socinians, Arminians, no heretics? I answer, all these may have some errors, but are no heretics." Now "Socinians" correspond with Unitarians; he says "Socinians" are no heretics. "Heresy

the will and the choice, professedly made against Scripture; error is
ıst the will in misunderstanding the Scripture, after all sincere endea-
ı to understand it rightly. Hence it was said well by one of the ancients,
I may, but heretic I will not be.' It is a human frailty to err, and
an is infallible here upon earth. But so long as all these profess to set
'ord of God only before them as the rule of faith and obedience, and use
iligence and sincerity of heart by reading, by learning, by study, by
:r for illumination of the Holy Spirit, to understand the rule and to
it, they have done what man can do. God will assuredly pardon them,
did the friends of Job, good and pious men, though much mistaken,
ere it appears, in some points of doctrine. But some will say, with
stians it is otherwise, whom God hath promised by his Spirit to teach
ıings. True, all things absolutely necessary to salvation; but the hot-
lisputes among Protestants, calmly and charitably inquired into, will
und less than such. The Lutheran holds consubstantiation—an error
:d, but not mortal. The Calvinist is taxed with predestination, and to
: God the author of sin, not with any dishonourable thought of God,
t may be over-zealously asserting his absolute power, not without plea
ripture. The Anabaptist is accused of denying infants their right to
ism. Again, they say they deny nothing but what Scripture denies
. The Arian and Socinian are charged to dispute against the Trinity:
affirm to believe the Father, Son and Holy Ghost according to Scrip-
and the Apostles' Creed: as for the terms of Trinity, Trinity-unity,
ssentiality, Tri-personality and the like, they reject them as scholastic
ns, not to be found in Scripture, which by a general Protestant maxim
ıin and perspicuous abundantly to explain its own meaning in the pro-
ıt words belonging to so high a matter, and so necessary to be known;
stery indeed in their scholastic subtleties"——

r. KNIGHT BRUCE.—"Sophistic" in the edition I have.

r. ATTORNEY-GENERAL.—The variation is not material: I will
"sophistic," if you please——"but in Scripture a plain doctrine.
r other opinions are of less moment. They dispute the satisfaction of
st, or rather the word 'satisfaction,' as not scriptural, but they acknow-
: him both God and their Saviour. The Arminian, lastly, is condemned
:tting up free will against free grace; but that imputation he disclaims
l his writings, and grounds himself largely upon Scripture only. It
ot be denied that the authors or late revivers of all these sects and
ions were learned, worthy, zealous and religious men, as appears by
lives written; and the same of their many eminent and learned fol-
rs; perfect and powerful in the Scriptures, holy and unblameable in
lives. And it cannot be imagined that God would desert such painful
:ealous labourers in his church, and ofttimes great sufferers for their
:ience, to damnable errors and a reprobate sense, who had so often im-
d the assistance of his Spirit; but rather hath pardoned their errors
ıccepts their pious endeavours, sincerely searching all things according
e rule of Scripture, with such guidance and direction as they can obtain
d by prayer. What Protestant, then, who himself maintains the same
:iples and disavows all implicit faith, would persecute and not rather
itably tolerate such men as these, unless he mean to abjure the princi-
of his own religion? If it should be asked, how far they should be
ated? I answer, doubtless equally, as being all Protestants; that is,
l occasions to give account of their faith, either by arguing, preaching
ıeir several assemblies, public writing, and the freedom of printing."—
ı was Milton a Christian? My Lords, Milton was a most sincere
stian, and, notwithstanding some mistaken notions that must be im-
d to him, an ornament to the Christian faith: he points out to all
:rity what he considered as essential, and he includes "Socinians"
ıg those who were to be recognized as Christians, and whose errors

were to be forgiven. My Lords, I will read to your Lordships a few passages from other writers about the same time.

Mr. KNIGHT BRUCE.—He goes on to say that Popery, as being idolatrous, is not to be tolerated either in public or private.

Mr. ATTORNEY-GENERAL.—I am much obliged to my learned friend. He was a great enemy to Popery. We are not now considering whether Papists are entitled to be included in this bounty; we are considering whether "Socinians" or Unitarians are; and Unitarians and "Socinians" are included in the list of those sectaries whose errors he considers to be pardonable, and who are still to be recognized as Christians.

My Lords, I will now refer your Lordships to a passage from "Locke's Treatise on the Reasonableness of Christianity." My Lord, he says——

Mr. KNIGHT BRUCE.—What page of what edition?

Mr. ATTORNEY-GENERAL.—Page 229.

Lord LYNDHURST.—Is that set forth in your printed papers?

Mr. ATTORNEY-GENERAL.—It is set forth in the Supplemental Case; it is in page 229 of Locke's work. To save my learned friend the trouble of asking for the page and edition, we will furnish him with the books in ample time, that he may compare these extracts with the original and see that they are faithful, and whether there is any thing in the context that at all alters their meaning. They are printed; therefore my learned friend may save himself the labour of asking for the page and the edition.

Mr. KNIGHT BRUCE.—I have no such copy.

Lord LYNDHURST.—Have we got them?

Mr. KNIGHT BRUCE.—I do not know, my Lord; I have never seen or heard of them.

Lord LYNDHURST.—Have you a printed copy to spare?

Mr. ATTORNEY-GENERAL.—I was in hopes that we had, my Lord: they will in a few minutes be here.

Mr. KNIGHT BRUCE.—They ought to have been shewn us before, if they were intended to be used.

Mr. ATTORNEY-GENERAL.—My Lord, in this well-known treatise, with which my learned friend is no doubt familiar, Locke says, "As men, we have God for our King, and are under the law of reason; as Christians, we have Jesus the Messiah for our King, and are under the law revealed by him in the Gospel. And though every Christian, both as a Deist and as a Christian, be obliged to study both the law of nature and the revealed law, that in them he may know the will of God, and of Jesus Christ whom he hath sent; yet in neither of these laws is there to be found a select set of fundamentals, distinct from the rest, which are to make him a Deist or a Christian. But he that believes one eternal, invisible God, his Lord and King, ceases thereby to be an Atheist; and he that believes Jesus to be the Messiah, his King, ordained by God, thereby becomes a Christian, is delivered from the powers of darkness, and is translated into the kingdom of the Son of God; is actually within the covenant of grace, and has that faith which shall be imputed to him for righteousness; and if he continues in allegiance to this his King, shall receive the reward, eternal life."—"That which is required of them is a sincere endeavour to know his mind, declared in the Gospel, and an explicit belief of all that they understand to be so. Nothing can be absolutely necessary to be believed but what, by this new law of faith, God of his good pleasure hath made to be so. And this, it is plain, by the preaching of our Saviour and his apostles, to all who believed not already in him, was only the believing the only true God, and Jesus to be the Messiah whom he hath sent."—Then, at page 101, he says, "To this it will be objected by some, that to believe only that Jesus of Nazareth is the Messiah, is but an historical, and not a justifying or saving, faith. To which I answer, that I allow to the makers of systems and their followers to invent and use what distinctions they please, and to call things by

what names they think fit; but I cannot allow to them, or to any man, an authority to make a religion for me, or to alter that which God hath revealed. And if they choose to call the believing that which our Saviour and his apostles preached, and proposed alone to be believed, an historical faith, they have this liberty.—For, that this is the sole doctrine pressed and required to be believed in the whole tenor of our Saviour's and his apostles' preaching, we have shewed through the whole history of the Evangelists and the Acts. And I challenge them to shew that there was any other doctrine, upon their assent to which, or disbelief of it, men were pronounced believers or unbelievers."—"These two, faith and repentance, that is, believing Jesus to be the Messiah, and a good life, are the indispensable conditions of the new covenant."—"Whenever men take upon them to go beyond those fundamental articles of Christianity, where will they stop? Whenever any set of men will require more as necessary to be believed to make men of their church, that is, in their sense Christians, than what our Saviour and his apostles proposed to those whom they made Christians and admitted into the church of Christ, however they may pretend to recommend the Scripture to their people, in effect no more of it is recommended to them than just comports with what the leaders of that sort have resolved Christianity shall consist in."—"This, as great an absurdity as it is, cannot be otherwise, whilst men will take upon them to *alter the terms of the Gospel;* and, when it is evident that our Saviour and his apostles received men into the church, and pronounced them believers, for *taking him to be the Messiah, their King and Deliverer,* sent by God, have the boldness to say, '*This is not enough.*' But, when you would know of them, what then is enough, they cannot tell you."

My Lords, I will now refer to a passage from a Prelate of the Church of England, Bishop Watson, the Bishop of Landaff. My Lords, in Bishop Watson's "Considerations on the Expediency of Revising the Liturgy," at page 67, you have this passage: "Was I compelled to receive a creed of *human* composition, I would more willingly, in these enlightened times, receive one from such men as Locke, Clarke or Tillotson, than from either Athanasius or Arius, or even from hundreds of contentious or political bishops, assembled in solemn council at *Nice,* Antioch or Ariminum." He afterwards says, "With respect to the doctrine of the Trinity, as *explained* by Athanasius or any other *man,* I cannot look upon it to be so fundamental in religion, as to think we should be *guilty of sin,* in consenting to revise, or even to change it. If in this I differ from some, I have others to support me; nay, I have the great principle of all the Protestant churches in the world in my favour; for it is a principle with them all, to admit the fallibility of all *human* explications of Scripture. Every *human* explication then of the Trinity may be an erroneous explication, and what *may* be an *error,* cannot be and ought not to be imposed as a fundamental Christian verity."

I would next, my Lords, read your Lordships a short passage from the writings of Dr. Hey, Professor of Divinity at Cambridge: in the 2nd volume of his Lectures, page 41, he thus writes,—"We and the Socinians are said to differ; but about what? Not about morality or natural religion, or the divine authority of the Christian religion; *we differ only about what we do not understand,* and about what is to be done on the part of God; and if we allowed one another to use expressions at will, (and what great matter could that be, in what might be called unmeaning expressions?) we need never be on our guard against each other. A heathen Socrates, I think, would be surprised at those who agreed in so many things requiring declarations and subscriptions in order to exclude one another; he would judge that we might worship together, and even have the same body of doctrine, each part thinking freely in private, and using discreet expressions in public."

Next, my Lords, I will read a short extract from the writings of Baxter, who is well known to have been held in great veneration in the time of

Lady Hewley. In a treatise that is called "Baxter's Saints' Rest," he thus writes: "Two things have set the church on fire, and have been the plagues of it for above a thousand years. First, enlarging our creed and making more fundamentals than God ever made. Second, composing (and so imposing) our creeds and confessions in our own words and phrases. When men have learnt more manners and humility than to accuse God's language as too general and obscure (as if they could mend it), and have more dread of God, and compassion on themselves, than to make those fundamentals or certainties which God never made so; and when they reduce their confessions, first, to their due extent, and second, to Scripture phrase, (that dissenters may not scruple subscribing,) then, (I think,) and never till then, shall the church have peace about doctrinals. It seems to me no heinous Socinian notion, which Chillingworth is blamed for, namely, Let all men believe the Scripture, and that only, and endeavour to believe it in the true sense (and promise this), and require no more of others; and they shall find this not only a better, but the only means to suppress heresy and restore unity," &c.

Lord KENYON.—The learned counsel has been reading a passage from Baxter which seems to imply his general disapprobation of creeds; can he read any thing of Baxter's in which he implies an approbation of the opinion of Unitarians upon the doctrine of the Trinity?

Mr. ATTORNEY-GENERAL.—I have read this extract from Baxter.

Lord KENYON.—He there expresses a general disapprobation of creeds, but can you find such an extract?

Mr. KNIGHT BRUCE.—Baxter, my Lord, calls Socinians, Infidels; he says so in so many words.

Mr. ATTORNEY-GENERAL.—Baxter was a strong Trinitarian himself, undoubtedly; but being a strong Trinitarian, he was against making any such religious distinctions; and he, my Lords, I apprehend, if he had been founding a charity, would not have at all adopted any such exclusive rule as that for which my learned friends on the other side of the bar contend. I feel obliged to the noble Lord for drawing my attention to that circumstance, because the very fact of his being a Trinitarian gives greater weight to the opinion that he expresses with regard to compulsion, and his condemnation of the doctrine of exclusion and of particular tests.

My Lords, I will now read your Lordships an extract from Bishop Gibson, who wrote in the reign of George the First; in his Second Pastoral Letter, published in the year 1735, he says,—"It will appear that the several denominations of Christians agree both in the *substance of religion* and in the necessary *enforcements* of the *practice* of it; that the world and all things in it were created by God, and are under the direction and government of his all-powerful hand and all-seeing eye; that there is an essential difference between good and evil, virtue and vice; that there will be a state of future rewards and punishments, according to our behaviour in this life; that Christ was a teacher sent from God, and that his apostles were divinely inspired; that all Christians are bound to declare and profess themselves to be his disciples; that not only the exercise of the several virtues, but also a belief in Christ, is necessary, in order to their obtaining the pardon of sin, the favour of God, and eternal life; that the worship of God is to be performed chiefly by the heart in prayers, praises and thanksgivings; and as to all other points, that they are bound to live by the rules which Christ and his apostles have left them in the Holy Scriptures. Here then is a fixed, certain and uniform rule of faith and practice, *containing all the most necessary points* of religion, established by a divine sanction, embraced as such by all denominations of Christians, and *in itself abundantly sufficient to preserve the knowledge and practice of religion in the world.*"

Now, my Lords, I have the authority of this Prelate of the Church of England for saying that he did not consider this doctrine of the Trinity as

essential to salvation, or that a man was not a Christian because he unfortunately disbelieved it; he himself being, I believe, perfectly orthodox, and not liable to the charge of any particular heresy.

Bishop of LONDON.—On what particular expressions do you consider that Bishop Gibson expressed that he did not consider the doctrine of the Trinity to be necessary to salvation?

Mr. ATTORNEY-GENERAL.—He describes, my Lords, all that he considers to be necessary, which would include all my clients, both those who are Unitarians and still more those who are not.

Lord WYNFORD.—One of those is a belief in Christ.

Bishop of LONDON.—A belief in Christ, as what?

Mr. ATTORNEY-GENERAL.—That he was sent from God, that he was a Divine Messenger, that he worked miracles, that he preached the word of God, that he taught us eternal life.

Mr. KNIGHT BRUCE.—The passage you have read from Bishop Gibson stops at the word "world." Will you allow me to read on?—"As to points of greater intricacy and which require uncommon degrees of penetration and knowledge, such indeed have been subjects of dispute among persons of study and learning in the several ages of the Christian church; but the people are not obliged to enter into them, so long as they do not touch the foundations of Christianity and have an influence upon practice."

Mr. ATTORNEY-GENERAL.—I am much obliged to my learned friend; that does not in the slightest degree qualify the passage which I have read, in which there is an enumeration of all that he conceives to be essential. I am not at all standing here, in my private capacity, to say that this is sound doctrine. I am not intimating what is right, and what is wrong, in my own judgment; but I am bringing passages to shew what others thought, to whose opinion the greatest weight is to be ascribed.

Bishop of LONDON.—That passage of course will be interpreted with reference to the object of that Pastoral Letter. He wishes to persuade all persons to practise religion, by shewing that there are some great points upon which they are agreed. There is not a word in that passage from which you can infer that he does not think the doctrine of the Trinity an essential doctrine of Christianity.

Mr. ATTORNEY-GENERAL.—I can only say that he enumerates those which are essential, and this is not to be found among the number.

The Bishop of LONDON.—Might I be permitted to ask for what purpose all these passages are cited?

Mr. ATTORNEY-GENERAL.—To shew, my Lord, that although a certain class of religionists, who are called Unitarians, do not believe in the doctrine of the Trinity, although they do not believe in the doctrine of Original Sin, although they do not believe in the doctrine of the Atonement, —still that they are godly preachers of Christ's holy Gospel.

Lord LYNDHURST.—In the sense in which the term was then used?

Mr. ATTORNEY-GENERAL.—That in the opinion of Christians of all sects and all denominations, who wrote before and who wrote after, they were considered as Christians, although, unfortunately, they did not believe in those doctrines which are the doctrines of the Church of England and the Church of Scotland.

My Lords, as a noble Lord referred to Baxter, I beg leave to read to your Lordships an extract from Dr. Calamy's Abridgment of the Life of Baxter, which was written by him in the year 1713. He said "he proposed the offering to the Parliament the Creed, Lord's Prayer and Ten Commandments, as the essentials or fundamentals of Christianity."

Bishop of LONDON.—The Creed.

Mr. ATTORNEY-GENERAL.—"The Creed, Lord's Prayer and Ten Commandments, as the *essentials* or *fundamentals of Christianity*, containing all that is *necessary to salvation*. When they objected that this might

be subscribed by a Papist or Socinian, his answer was, that it was so much the better and the fitter to be the matter of concord; but that, if they were afraid of communion with Papists and Socinians, it should not be avoided by making a new rule or test of faith which they will not subscribe to, or by forcing others to subscribe to more than they can do; but by calling them to account whenever, in preaching or writing, they contradicted or abused the truth to which they have subscribed. They resolved, however, to hold on in the way they had begun, and so all that he had left to do was to use his endeavours to prevent their *multiplying fundamentals* needlessly."

Bishop of LONDON.—Do you infer from that, that Baxter would have called the preachers to account for impugning any of those doctrines?

Mr. ATTORNEY-GENERAL.—Baxter, my Lord, being, as is admitted on all hands, a strong Trinitarian, says that the Church might call a person to account for impugning any of the doctrines of the Church, even where no test had been required, except the Lord's Prayer, the Creed and Ten Commandments; but he does not say that he himself would—very far from it; he says that the Church would, and very properly the Church would; because there must be in every Church,—I hope there will ever be an Established Church in this country; and there being an Established Church in this country, you must necessarily have a standard of faith, and you must call those to account who do not keep that standard of faith; but at the same time, that is not in the slightest degree inconsistent with allowing Nonconformists, with allowing the voluntary principle to operate to a certain degree in aid of the Establishment, allowing those who do dissent from the Church, to propagate any opinions they please within the pale of Christianity, so that they do so with respect and reverence to the established religion of the country.

Now, my Lords, your Lordships shall hear what is said of Archbishop Tillotson by Birch, in his Life of the Archbishop: he says, "The Scriptures were the rule of his faith, the chief subject of all his meditations. He judged that the great design of Christianity was, the reforming men's natures and governing their actions, the restraining their appetites and passions, the softening their tempers and sweetening their manners, and the raising their minds above the interest and follies of this present world to the hope and pursuit of endless happiness."

My Lords, here is another extract from Baxter's own writings—his "Cure of Church Divisions:" he says, "In a word, the effectual belief of pardon and eternal glory given through Christ and the love of God and man, with the denial of ourselves and fleshly desires, and contempt of all things in the world, which are competitors with God and our salvation, with a humble, patient enduring of all which must be suffered for these ends, is the nature and sum of the Christian religion."

My Lords, I will next give you a short extract from Dr. Thomas Manton's Works, who was a Presbyterian Dissenter and a contemporary of Baxter. He says, "Then do we honour the Trinity in Unity, not when we conceive of the mystery, but when we make a religious use of this high advantage to come to God in the name of Christ by the Spirit, and look for all from God in Christ through the Holy Ghost. Direct your prayers to God the Father; Christ prayed to the Father—'I thank thee, O Father, Lord of heaven and earth.' So the Saints in their addresses—'For this cause I bow my knees unto the Father of our Lord Jesus Christ.' Pray in the name of Christ—'Whatsoever ye shall ask in my name, that will I do.' Pray by the Spirit—'Praying in the Holy Ghost;' 'Likewise the Spirit itself also helpeth our infirmities, because he maketh intercession for the saints, according to the will of God.' *Christians need not puzzle themselves about conceiving of Three in One, and One in Three;* let them in this manner come to *God*, and it sufficeth; make God the object, and Christ the means of access, and look for help from the Spirit." Now, my Lords, Manton as well as Baxter was

nitarian, and still, my Lords, he does not consider that doctrine as an
ial of Christianity.
Lords, I will finally read to your Lordships another extract from the
gs of Bishop Watson—a very short extract, with which I shall close
ead of my address. It is in Watson's Tracts, Vol. I. page 17. He says,
ifferent men, in carefully and conscientiously examining the Scriptures,
l arrive at different conclusions, even on points of the last importance,
ist God will be merciful to him that is in error. We trust that he will
n the Unitarian if he be in error, because he has fallen into it from a
of becoming an idolater, of giving that glory to another which he
ives to be due to God alone. If the worshiper of Jesus Christ be in an
we trust that God will pardon his mistake, because he has fallen into
n a dread of disobeying what he conceives to be revealed concerning
ature of the Son, or commanded concerning the honour to be given
Both are actuated by the same principle—the fear of God; and
h that principle impels them into different roads, it is our hope and
that if they add to their faith charity, they will meet in heaven."
my Lords, no one will deny that Bishop Watson here considers that
may be a sincere Christian, that he may partake of the benefits of
ianity, that he may be saved, although he unfortunately does not
e in this particular doctrine.
w, my Lords, after these authorities, will my learned friends say that
rians are not Christians, and that an Unitarian preacher who preaches
divine mission of Jesus Christ, who preaches upon his miracles, upon
ctrine that he promulgated from heaven, upon the eternal life that he
d to mankind, and who inculcates the doctrines that he laid down and
ecepts which he left for our direction, that this person is not a Chris-
May not that person be well considered a preacher of Christ's holy
l? My Lords, if this be not so, then where are you to begin—where
line to be drawn? My learned friends say that Unitarians are not
ians. Well, then, my Lords, are those Christians that believe that the
d Person in the Godhead is co-eternal, but not of the same substance
Father, but is of the like substance? That controversy, as your
hips well know, divided for an age or two the Christian world.
hop of LONDON.—Not co-eternal.
ATTORNEY-GENERAL.—I am obliged to the learned Prelate for
ting me, but the Homoiousians I had imagined had believed in the
l existence of the Second Person in the Godhead.
hop of LONDON.—The pre-existence, but not the eternal existence.
ATTORNEY-GENERAL.—The Arians believe in the pre-existence,
t the eternal existence; but shall it be said that it would be heretical,
ore than it would be heretical of a person who believed in the eternal
nce of the Second Person in the Godhead?
hop of LONDON.—That is to say, an eternal, independent existence.
ATTORNEY-GENERAL.—I thought that those who believed that
econd Person in the Godhead was of co-eternal existence with the
r, also believed that he was of like substance, but not of the same
nce; not like the Arians, who believe that he had a pre-existence, but
e was a created being; but that those who believed that he was of the
ibstance, believed that he was co-eternal with the Father.
hop of LONDON.—Those are the Arians, and the Homoiousians are
me.
ATTORNEY-GENERAL.—But, my Lords, that would certainly be
al doctrine. I conceive for any person to publish or to preach that
cond Person of the Godhead was co-eternal with the Father, but not
same substance, but of like substance,—that would be a heresy; and
person a Christian or not? Let us go by steps. We now come to
ian, who says that Christ had a pre-existence, that he was the first of

created beings; who believes in the doctrine of the Atonement, and in every thing except that the Second Person of the Godhead was co-eternal with God, and was of the same substance. Then, my Lords, is it to be said that Milton and others who are known to have been Arians, are not Christians, since they certainly were not Trinitarians; and shall it be said that persons who preached the Arian doctrine, for that reason, cannot be considered as godly preachers of Christ's holy Gospel? Well, my Lords, if you cannot brand the Arians with being no Christians, then are you to say that the Unitarians are no Christians?—because the Arians deny the doctrine of the Trinity just as much as the Unitarians, but both believe in the divine mission of our Saviour, both believe in his miracles, both believe that the Scriptures contain the revealed will of God, by which our belief and our conduct are to be regulated.

My Lords, I know not what my learned friend, Mr. Knight Bruce, will contend at your Lordships' bar; but it has been intimated that not only by the Toleration Act, not only by the 9th and 10th of William III., by which the impugning the doctrine of the Trinity is forbidden by statute, but it is said that even at common law this is an offence for which the secular arm may be put in motion, and the heretic may be subjected to punishment. My Lords, that is a doctrine that I beg leave most respectfully to controvert and to deny. Christianity is part and parcel of the law of England; and any person who denies Christianity, who denies the divine mission of our Saviour, who denies that the Scriptures contain the revealed will of God, commits an offence for which he is amenable to the civil magistrate. So I would most undoubtedly admit that any one that reviles any of the doctrines of the Church of England is a very fit object for prosecution and punishment. But, my Lords, inquiry into the doctrines of Christianity is allowed by the law of England; and any person who respectfully and reverently and modestly discusses such subjects, may do so with impunity; and it would be persecution to try to molest him.

My Lords, it has been well settled that to deny the truth of the Christian religion is a civil offence. That was laid down by Lord Chief Justice Hale, in the case of the King *v.* Taylor, which is to be found in 1st Ventris, 293. There he said, Christianity is parcel of the law of England, and therefore to speak in reproach of the Christian religion is to speak in subversion of the law. To the same purpose, Lord Raymond, in Woolston's case, in 2nd Strange, page 834, laid down that Christianity in general is parcel of the common law of England, and therefore to be protected by it. But in all those cases a distinction is made between attacking Christianity and decently investigating any doctrine of the Christian faith.

My Lords, in the well-known case of Harrison *v.* Evans, which is to be found in 6th Brown's Parliamentary Cases, 181, Lord Mansfield says,—"There never was a single instance, from the Saxon times down to our own, in which a man was ever punished for erroneous opinions concerning rites and modes of worship, but upon some positive law." If there be such a statute as the 9th and 10th of William the Third, of course it may be put in force; but there is now no common law; and he says, "There never was a single instance, from the Saxon times down to our own, in which a man was ever punished for erroneous opinions concerning rites and modes of worship, but upon some positive law. The common law of England, which is only common reason or usage, knows of no prosecution for mere opinions. For Atheism, blasphemy and reviling the Christian religion, there have been instances of persons prosecuted and punished upon the common law."

My Lords, the same doctrine has been repeatedly laid down by the Judges in our own times, in those prosecutions that were instituted against Carlile for blasphemous publications, which he sold at his shop in Fleet Street, which reviled the Christian religion. The same qualification is laid down to the doctrine, that although to deny the Christian religion, which is parcel

law of England, is an offence, that the doctrines of the Christian re-
may be decently and respectfully investigated, and any doctrine, even
ctrine of the Trinity, may be impugned by those who disbelieve it.
ıerefore, my Lords, venture to come to this conclusion, that, in the
e of all statute-law upon the subject, construing the deed by which
Hewley's charity was established, there is no ground whatever for
; that Unitarians are excluded from participating in her bounty.
ll now bring before your notice the statutes that are relied upon to
hat Unitarians must be excluded, even if at common law they might
ipients of this charity. My Lords, the first statute to be referred to is
th of Charles the Second. Your Lordships are well aware that, by
rd of George the Third, Unitarians are now placed exactly upon the
ooting with all other Christian Dissenters: but they did stand upon a
nt footing till that Act of Parliament passed. There was first the Act
iformity, which is the 14th of Charles the Second, chapter 4; an Act
ir Matthew Hale opposed, but which became law; and according to
ct of Parliament, all clergymen who did not sign the Thirty-nine Arti-
ıd conform in all respects to the Liturgy of the Church of England, by
tholomew's Day, in the year 1662, were to be ejected from their livings;
e celebration of religious worship, except according to the Liturgy of
ıurch of England, was strictly forbidden. And so things continued,
rds, till after the Revolution. But, in fact, although such was the
of the law, from the year 1662 down to the year 1689, it is well known
could not be carried into effect; because those very rigid statutes, if
carried into effect, would have been found altogether intolerable.
lovernment, therefore, wisely connived at the celebration of divine
p by Dissenters, although it was not publicly recognized; and there
oubt that Lady Hewley assisted those who during that interval broke
ter of the law. It was found to be quite against the feelings of the
that that law should be enforced. It was for something of that sort,
k, that Chief Justice Kelyng fined a jury on the Western circuit,
e they refused to find some persons guilty that were indicted for
g together in a religious assembly, and not reading the Liturgy.
was one specimen of the general feeling of the people. The jury
not convict, notwithstanding all the threats and solicitations of the
Justice, and they were afterwards fined for their disobedience.
Lords, things went on in this manner until the Revolution, and the
tion Act passed, which is the 1st of William and Mary, chapter 18.
t will be very material that your Lordships should bear exactly in
he degree of toleration that was given by this Act of Parliament,
e it was under this Act of Parliament that people lived in the years
nd 1707, when these deeds were executed by Lady Hewley. It was
qualified toleration, because it was only extended to those who signed
Articles of the Church of England, with the exception of three Arti-
d part of a fourth.—By the 7th section of this Act of Parliament, it
ted, "That no person dissenting from the Church of England, in holy
or pretended holy orders, or pretending to holy orders, nor any
er or teacher of any congregation of Dissenting Protestants, that shall
nd subscribe the declaration aforesaid, and take the said oaths, at the
l or quarter sessions of the peace to be held for the county, town,
r division, where such person lives, which court is hereby empowered
inister the same; and shall also declare his approbation of and sub-
the Articles of Religion mentioned in the statute made in the thir-
year of the reign of the late Queen Elizabeth, except—". Before he
titled to the benefits of the Toleration Act, he was obliged to sub-
all the Thirty-nine Articles—"except the 34th, 35th and 36th Arti-
ıd these words of the 20th Article, viz., The Church hath power to
rites and ceremonies, and authority in controversies of faith." All

persons that would subscribe all the Thirty-nine Articles, with those exceptions, were not to be liable to any of the pains and penalties that were provided by the former Acts of Parliament. Then the 9th section applies to Baptists,—"And whereas some Dissenting Protestants scruple the baptizing of infants, be it enacted, by the authority aforesaid, that every person in pretended holy orders, or pretending to holy orders, or preacher or teacher, that shall subscribe the aforesaid Articles of Religion, except as before excepted, and also except part of the seven-and-twentieth Article, touching Infant Baptism, and shall take the said oaths, and make and subscribe the declaration aforesaid, in manner aforesaid, every such person shall enjoy all the privileges, benefits and advantages, which any other Dissenting minister, as aforesaid, might have or enjoy by virtue of this Act."—Then by the 16th section there is an express exception of those who impugn the doctrine of the Trinity,—"Provided always and be it further enacted, by the authority aforesaid, that neither this Act, nor any clause, article or thing, herein contained, shall extend, or be construed to extend, to give any ease, benefit or advantage, to any Papist or Popish recusant whatsoever; or any person that shall deny, in his preaching or writing, the doctrine of the blessed Trinity, as it is declared in the aforesaid Articles of Religion."

My Lords, when the 9th and 10th year of William the Third arrived, there was passed an Act of Parliament, making it positively penal to deny that doctrine by writing or advised speech. That was the 9th and 10th of William the Third, chapter 32; and no person doing so was allowed to enjoy or possess any office, place or employment, who was convicted upon this statute.

My Lords, this was the state of the law when Lady Hewley's deeds were executed. Then, my Lords, came the 19th George the Third, chapter 44. By this, the subscription of the Thirty-nine Articles was entirely dispensed with, and any person was entitled to the benefit of the Toleration Act who could make this declaration: "I, A. B., do solemnly declare, in the presence of Almighty God, that I am a Christian and a Protestant, and, as such, that I believe that the Scriptures of the Old and New Testament, as commonly received among Protestant churches, do contain the revealed will of God; and that I do receive the same as the rule of my doctrine and practice." Now I would adopt that as a test as to who are Christians, who are to be considered as godly preachers of Christ's holy Gospel. I say that any person who can truly and conscientiously make this declaration, is to be considered as believing in Christ's holy Gospel, and whatever preacher will make it, may be considered as a preacher of Christ's holy Gospel; by solemnly declaring that he is a Christian and a Protestant, and he believes that the Scriptures of the Old and New Testament contain the will of God; and that he receives the same as the rule of his doctrine and practice.

Lord WYNFORD.—Then there comes the question, What are the Scriptures? Because there is a difference upon that, I think.

Mr. ATTORNEY-GENERAL.—I am not at all aware that with regard to the canon of Scripture there is a difference between Unitarians and Trinitarians.

Lord WYNFORD.—Do they admit the first chapter of Matthew?

Mr. ATTORNEY-GENERAL.—In the Church of England, there is a controversy with regard to one important passage of St. John (1 Ep. v. 7, 8), with regard to the Three Heavenly Witnesses. I believe that by the Church of England in general, those verses are not considered as genuine. I believe that those verses in the 1st Ep. of St. John are not considered as part of the canon of Scripture; and although Unitarians may not only reject those, but may consider that there are other verses that likewise are not part of the holy canon, that does not at all shew that there is any material difference between the Church and Dissenters with regard to what shall be the canon of Scripture.

Mr. KNIGHT BRUCE.—The verse in Timothy is totally altered.

Bishop of LONDON.—I understood the question as to the difference, not to apply to the verses in the Epistle of St. John, but to the first chapters of St. Matthew and St. Luke.

Mr. ATTORNEY-GENERAL.—With respect to the first chapters of St. Matthew and St. Luke, I believe that some Unitarians reject these, as I believe the Church of England now rejects the verse as to the Three Heavenly Witnesses.

Bishop of LONDON.—No, the Church does not reject it.

Mr. ATTORNEY-GENERAL.—I beg pardon; I speak with the most unfeigned respect; I thought that was generally admitted.

Bishop of LONDON.—The Church of England does nothing but by a competent mouth-piece.

Mr. ATTORNEY-GENERAL.—I was wrong in saying the Church, but I thought that members of the Church of England, individually at least, had generally yielded to the strong reasoning upon that subject which was brought forward by Porson.

Bishop of LONDON.—Will you undertake to say on behalf of the Unitarians, that they receive the Holy Scriptures as the Church of England receives them?

Mr. ATTORNEY-GENERAL.—I really believe so. If your Lordship asks me my belief upon the subject, I am bound to give it, and I believe that the great majority of them do.

Bishop of LONDON.—Did you ever see the Improved Version of the New Testament?

Mr. ATTORNEY-GENERAL.—The Improved Version of the New Testament, which I shall by and by make a remark upon, is not any test of the faith of Unitarians; and there has been an importance given to that by the learned Judge who first decided this case, which I shall very respectfully but strenuously contend, before your Lordships, it was by no means entitled to. We must take the faith of the Unitarians from what they swear in their answers.

Lord WYNFORD.—Does any one of the defendants swear in his answer that the construction he puts upon the first chapter of St. John is that which we put upon it?

Mr. ATTORNEY-GENERAL.—There is no reference to the first chapter of the Gospel by John.

Lord WYNFORD.—Their construction is, that "the Word" was from the beginning of Christianity; whereas, according to our belief, it was from before the beginning of the world.

Bishop of LONDON.—The question is not as to the interpretation of a particular part of Scripture, but as to the authority of the whole.

Mr. ATTORNEY-GENERAL.—As to the genuineness of it. It is impossible that an Unitarian can put the same construction upon any of those texts that is put by a Trinitarian. He would cease to be an Unitarian, if he were to put the Trinitarian interpretation upon them. But he still believes that those texts are part of the revealed will of God. He believes that they came by inspiration, and that, both as to doctrine and as to practice, those are to be the rules of his faith and of his conduct. An Unitarian can conscientiously subscribe this declaration, which is required by the 44th chapter of the 19th of George the Third. He can solemnly declare in the presence of Almighty God, that he is a Christian and a Protestant, that he believes that the Scriptures of the Old and New Testament, as commonly received amongst Protestant churches, do contain the revealed will of God, and that he receives the same as the rule of his doctrine and his practice.

But still, till the 53rd of George the Third was passed, there was an exception against those who retained this particular doctrine. But by the 53rd of George the Third, chapter 160, all distinction was taken away

between Unitarians and other Dissenters from the Church of England. That Act passed in the year 1813, I think, Lord Liverpool, being the Prime Minister of England at the time, strongly supporting the Act of Parliament. This Act of Parliament repeals the exception in the Toleration Act, which was meant to operate against Unitarians; and it further expressly repeals the 9th and 10th of Wm. III., which made it penal to deny the doctrine of the Trinity. By the second section it is enacted that the provisions of that Act, "so far as the same relate to persons denying, as therein mentioned, respecting the Holy Trinity, be, and the same are hereby, repealed." And there were certain Acts of the Scottish Parliament that were repealed, which rendered it a capital offence to deny the doctrine of the Trinity. Therefore, when this 53rd of George the Third had passed, then all distinction in point of statute-law was done away with, between Unitarians and other sects of Dissenters from the Church of England.

Now, my Lords, that being so, the question arises, Are you (in respect of this Act of Parliament, the exception in the Toleration Act and the 9th and 10th of William the Third) are you to put a different construction upon Lady Hewley's deeds, from that which they would receive if those Acts never had passed? It is said, Can it be supposed that she would include among the objects of her bounty a sect that was then subject to penalties? Why, my Lords, while that exception in the Toleration Act continued, and while the 9th and 10th of William the Third was still in force, it may be said that Unitarians could not derive any benefit from her intentions. It may be said that it was unlawful, and that a Court of Equity would not carry into effect a trust which the law had prohibited. But when those Acts were repealed, they were as if they never had existed. A repealed law is entirely to be struck out of the statute-book, with reference to all that is to be done after the law is repealed. It was held by Lord Brougham, in the case of Bradshaw *v.* Tasker, which is to be found in 2nd Mylne and Keen 221, that where there was a legacy left in favour of Roman Catholics before the Bill was passed that relieved them, that Bill relieving them having passed, the trust might be carried into effect, and that they might derive the benefit that was intended for them by the testator.

Now, my Lords, suppose that Lady Hewley had expressly said, that she left this charity for "poor and godly preachers of Christ's holy Gospel that should be tolerated by law for the time being,"—can there be a doubt that when Unitarians were tolerated by law, which was in the year 1813, they might then participate in her bounty? But has not she said the same thing? She has said that it was for the benefit of godly preachers of Christ's holy Gospel for the time being. Why, does not that mean this—"who should be tolerated by law from time to time"? We have her intentions called in question, and it is said, Was it possible that Lady Hewley should mean to do any thing for the benefit of those who had the arm of the law suspended over them? Why, my Lords, Lady Hewley, according to the representation of the Relators, had been art and part in violating the law for twenty-seven years before, from St. Bartholomew's Day, 1662, till the Toleration Act passed, in 1689. She was in the daily habit of assisting Dissenting ministers whose preaching was penal, and who might any day have been indicted for an unlawful assembly. My Lords, the very expression she uses, "for the time being," seems to me strongly to intimate that she wished to make her benefaction as extensive as possible, and that if the restrictions which at the time that she actually founded this charity, should be removed, that her bounty might expand with the increasing liberality of the law.

But, then, I would ask my learned friends to answer this question. Your Lordships will observe, that until the year 1779, no one could lawfully be a Dissenting teacher in this country who did not sign all the Thirty-nine Articles, except three and part of a fourth. They were all guilty of a misdemeanor, for which they were indictable,—they were all liable to the

ies in the Uniformity Act,—if they met in a religious assembly and iped God according to their consciences, if they had not signed those es according to the doctrines of the Church of England. My Lords, at put in practice? Will any one say that, even in Lady Hewley's the Nonconformist ministers did comply with that requisition in the ition Act? My Lords, those Acts are sometimes passed with a igh and well-known understanding that they are not to be enforced. Act never was enforced. It would have been found intolerable, if any pt had been made to enforce it. Lady Hewley well knew this. She that the Presbyterian and the Baptist and the Independent ministers, vere to share in her bounty, if you look to the strict letter of the law, laily violating the law. They received licences at the quarter sessions eir places of worship; but that they subscribed the Thirty-nine Arti- n the manner required by the letter of the law, is what I positively But still, until the year 1779, they were bound to do so, and were all t to penalties for the omission.

ll then, my Lords, the position of my learned friend is this: Lady y cannot be supposed to have intended that any person should parti- in her bounty who did not comply with the strict letter of the Act of ment. Then that would have excluded the great bulk of those for benefit her charity was intended.

Lords, for these reasons, I submit to your Lordships, that upon a r construction of these deeds, whether you construe the deeds without l to the statutes, or whether you construe the deeds, regard being had statutes, that Unitarians are not excluded, and that they must still nsidered as "godly preachers of Christ's holy Gospel." But, my , I may further contend, if it be necessary, that even if you were to o the private opinions of Lady Hewley, and give a different construc- o her deeds in respect of those private opinions, this Decree cannot be rted. It is proved that she was a Presbyterian. I deny that there is ent proof that she was a Trinitarian. But suppose that she had been Presbyterian and a Trinitarian, does it necessarily follow that she led to exclude from the benefit of her charities all who were not of the religious belief with herself? My Lords, there is no doubt that the yterians at one time were devotedly attached to creeds and tests and of belief. It was so, and is so, in Scotland to this day. The Pres- an Church of Scotland remains, and I hope always will remain, in the in which it was established. They insist upon any person, who es a member of the Church, signing the Confession of Faith; and rly they insisted upon his signing the Solemn League and Covenant. English Presbyterians, in the middle of the 17th century, were equally In the year 1648, during the time of the Usurpation, the Presbyte- religion was established by an Ordinance of the Parliament. The l that had been adopted in Scotland was to be followed; and sessions, yteries, synods and a general assembly, which was taken from the h at Geneva. Instead of Presbyteries, I think they were to be called es in England, and there was a strong feeling that none who did not rm to that Church, should be tolerated. But after St. Bartholomew's ame, when the Presbyterians in England had fallen into adversity, adopted very different sentiments. Being persecuted themselves, they l to foster doctrines that would countenance persecution, and they hostile to all creeds and confessions. Believing, as many of them did, orthodox doctrine of their fathers, they still had a latitudinarian ten- to admit within the pale of their communion persons who might differ them in very important doctrines. They allowed open communion. ho chose to come to participate in the holy sacrament of the Lord's er, were admitted; and that is the great distinction between them and ndependents. The Independents were much more rigid. They denied

the propriety of the practice of open communion, and would allow none to communicate with them except those who were precisely of the same faith with themselves. It was upon that point mainly, that in the beginning of the 18th century those two sects of religionists differed. In the middle of the preceding century, they differed *toto cœlo* on questions of discipline. The Presbyterians were for an established church, with a gradation of courts, and a very strict system of discipline. The Independents, on the other hand, were against any such establishment. They were called Congregationalists, and they said that each congregation formed a church in itself. In the beginning of the 18th century, the difference with regard to discipline had very much subsided; but with regard to the question of having a test of religious belief, they were then entirely at variance. It is said that Lady Hewley (and it is said truly) belonged to the Presbyterians, who were of the more liberal cast. And it might be easy to bring forward many passages (but I will not fatigue your Lordships by attempting to do it) to shew that the Presbyterians, at the time when they were most orthodox, were for a comprehensive system, that might admit within the same communion persons who had very material differences from themselves. I think there is no ground for saying, that although Lady Hewley herself might be a Trinitarian, she had made up her mind and expressed any intention that none except those who believed in the doctrine of the Trinity should participate in her bounty.

Now it is assumed on the other side, that, being a Presbyterian, she was a Trinitarian; and that, being a Trinitarian, she must necessarily have intended to exclude all except Trinitarians from being the objects of her charity. I say, my Lords, that you are not at all to construe her deeds in any peculiar sense from the fact of her being a Trinitarian or a Presbyterian. But even if you were to believe that she was a Presbyterian and a Trinitarian, my learned friends have no right to say, that because she herself held particular articles of faith, for that reason she meant to exclude all others from participating in her bounty who did not exactly agree with her.

My Lords, let me remind you what is proved with regard to Lady Hewley, who is supposed to have been so bigoted and so exclusive,—that she was a Nonconformist. It is said that she would not, by any means, allow any person belonging to the Church of England to participate in her bounty, and that she would not allow any person to participate in her bounty who did not believe in the doctrine of the Trinity. Why it is in evidence that she left a legacy of £500 to the poor of the Corporation of York. Those were all Church-of-England-men or Church-of-England-women. Those who belonged to the Corporation at that time must all have taken the test. They must have received the sacrament of the Lord's Supper according to the rites of the Church of England. Then, it is supposed that she was so bigoted, that she would not allow a single Church-of-England-woman to enter her almshouse, yet she leaves £500 for the benefit of those who must all have been members of the Church of England.

Again, she left another legacy for the poor of the liberty of York, which is a large district, extending miles round the city of York. Be they Trinitarians or Arians or Unitarians,—be they Church-of-England people or be they Dissenters,—without distinction, she leaves it for their common benefit. And this person, who is so munificent, who is so liberal, who has so much Christian piety and charity, is supposed in the foundation of this almshouse to exclude all who are of the Church of England, and to exclude all who do not believe in some particular doctrine of Christianity. I say, therefore, that, even if you were to travel out of the deed, and to look to her private opinions, and to construe the deed according to her private opinions, there is no ground for saying that it ought to receive this limited and narrow construction.

ɔw, my Lords, as to the removal of the Trustees. I have finished what ve to address to your Lordships respecting the *objects* of the charity. w come to the removal of the Trustees, which is a totally separate and nct branch of the Decree. It may happen that the Decree may be ɛctly correct with regard to the objects of the charity, and yet that : may be no ground upon which it can be supported as to the removal ıe Trustees. Now, I say that the Trustees are improperly removed,— because there is nothing to shew that the objects of the bounty of Lady ·ley may not be Unitarians; and, secondly, I say that they are impro- r removed, even supposing that the objects of the bounty of Lady Hew- nust be Unitarians,—that there is no ground for contending that the :tees must be of the same religious opinions with herself, or that they : be of the same religious opinions with those who are beneficially to icipate in the charity.

draw your Lordships' attention to the language that she employs, when ıays how the Trustees are to be elected: they are to be elected accord- :o the judgment and conscience of the survivors, without any qualifi- ın whatever with regard to religion. Well, then, my Lords, if she lays ı no such qualification, what right has a Court of Equity to superadd ıis deed what she has not expressed? It would have been a very easy er for her to have said, that the successors who were to act as her Trus- should not be Unitarians. She has said no such thing, and your Lord- s are therefore called upon to adopt this doctrine, that those who are to inister the charity must, as a rule of law, be of the same religious per- ion with those for whose benefit it is created.

y Lords, I have looked in the books and can find no such rule of law down. I never could find that there is any such decision or any *dictum* ıat effect. I know that it is contrary to what takes place in this coun- The Lord-Chancellor of this country is not necessarily required to ng to the Church of England; he cannot be a Roman Catholic, but he ht belong to the Church of Scotland, he might be a Protestant Dis- er; but the Lord-Chancellor has to administer all the charities of the ıtry, and he has to advise the sovereign upon many important points hich religion may be concerned.

gain, my Lords, according to the practice that prevails, the Secretary tate for the Home Department advises her Majesty with regard to appointment of all the clergy in the Church of Scotland, where the ıg is in the gift of the Crown; and I believe there are about one-third of livings in the Church of Scotland that are in the gift of the Crown. Secretary of State for the Home Department has generally been a ıber of the Church of England. I can give your Lordships one distin- hed example that I know of. Sir Robert Peel was Secretary of State ı good many years, being himself a most distinguished and respected ıber of the Church of England. He most undoubtedly had, practically king, in his hands the patronage of all those livings. I repeat here, t I have said more than once, that that power was most usefully and ·ficially exercised by him; that his maxim was *detur digniori;* and that xercised that patronage in a manner much to his own credit and much he benefit of the country from which I sprung. But, my Lords, Sir ert Peel was and is an Episcopalian. He is not a Presbyterian. He is a member of the Kirk of Scotland; and it might be said that it would n extremely injurious and mischievous thing, that the appointment of clergy of the Church of Scotland should belong to a member of another munion. My Lords, I am ready to acknowledge that in that instance no nvenience whatever arose from any such discrepancy, and that that onage was most honourably and usefully exercised.

et my learned friends, then, point out any rule of law by which your lships or a Court of Equity have laid down this—that if Trustees are

of a different religious opinion, either from the Founder of the charity or from the objects of the charity, that for that reason they must be removed. My Lords, it was for this reason, and for this reason alone, that the Vice-Chancellor ordered these individuals to be removed; and when Mr. Baron Alderson came to advise Lord Lyndhurst, he considered that it depended entirely upon that question whether they should be removed or not.

Now, my Lords, what ground is there for saying that any thing is either admitted or proved against these individuals, on account of which they ought to be removed from their office? My Lords, I read to your Lordships, from page 24 of the Appellants' Case, what Mr. Wood says; I will now read what is said by the Messrs. Heywood, which your Lordships will find at page 21. Mr. John Pemberton Heywood says——

Mr. KNIGHT BRUCE.—He is dead.

Mr. ATTORNEY-GENERAL.—He is dead, but we are to consider the Decree with regard to him as well as with regard to all the other Trustees. Mr. John Pemberton Heywood says, "That he has always professed himself to be a Dissenter of the Presbyterian denomination: that his ancestors for many generations back have professed the Presbyterian religion, and in that religion he was brought up, and has, as far as he knows, held the same faith, which he hath never left nor changed or deviated from: that he holds no doctrines which are not received, as he believes, by all the moderate and respectable part of the Church of England: that he was from his earliest infancy taught the Lord's Prayer, the Apostles' Creed and the Ten Commandments, which appear also to have been the foundation of the faith of Lady Hewley: that he has read, since this question was stirred, a good deal of the works of his ancestor, Oliver Heywood, who in the Information is mentioned as the friend of Lady Hewley, and who was, as he himself states, very intimate with her, and he cannot find any material difference between the faith of the said Oliver Heywood and his own: that he was educated at Cambridge, where Dr. Paley was his tutor, and from the many conversations he had with him upon the subject, he can safely assert that there was little or no difference in their religious opinions: that his ancestors have been, for more than a century, members of a congregation which met at Westgate, in Wakefield, in the county of York, who have always been called, by themselves and other persons, Presbyterians, till by the Relators, as he has heard, they were called Unitarians: that the said congregation have not adopted the name of Unitarian, nor do they, according to the best of his belief, hold any of the obnoxious tenets attributed to them by the Relators: that he has attended, and so did his father before him attend, the Established Church occasionally, to which he has always been friendly, and where he has frequently communicated, though he still continues to frequent and subscribe to the old Presbyterian congregation aforesaid: that he is now about seventy-five years old; has practised with some success as a Barrister for above fifty years; has acted as a Justice of the Peace for the West-Riding of Yorkshire, near thirty years; has lived on good terms with all his neighbours; and is, he humbly conceives and submits, not unworthy to be a Trustee of a charity, the object of which is to distribute money among poor godly preachers of the Gospel, and to poor widows, and to other poor persons." But, my Lords, upon this he is thought unworthy to be a Trustee; and he is removed, although he frequently attends the service of the Church of England and receives the holy sacrament at the altar.

Mr. Peter Heywood, his son, says, That he is the son of the last-named defendant, and hath been brought up in the same religious opinions: that he was educated at the University of Cambridge, and took his degrees there, and is still a member of Christ's College, in that University: and that he attends the Established Church more frequently than any other place of

; and that he is not a member of any Unitarian congregation. ıhares the fate of his father.

ıo, Mr. Palmes is removed; and so, Mr. John Wood is removed, 1 been elected a Trustee after the time when the Bill was filed. my Lords, is there any misconduct with which they can be charged? t pretended that they have embezzled the funds. No corruption is ıgainst them; it is not pretended that they have not properly ma- ıe estate; that they have not duly collected the rents and profits of ıerty which was left by Lady Hewley for this purpose. Then, what ead and front of their offending? My Lords, that, there being 237 ts of the charity, they have continued to pay the same as had been 50 years, to thirty-seven of those who are called Presbyterians, and supposed now to have adopted Unitarian doctrines; because they at some time or another inquire whether those congregations had not l their faith; because they did not catechise them, and did not stop plies when they found that they were not orthodox. My Lords, this improper. The Trustees submit that to your Lordships. They may llen into a mistake, they may have erred, they are fallible; they bmissively present themselves before your Lordships to receive your ns. They, one and all, say that they acted conscientiously, and ac- to the best of their judgment; but they are perfectly willing—they to the Vice-Chancellor, they said so to the Lord-Chancellor, and so to your Lordships—they are perfectly willing to administer the upon any principle that you shall lay down and direct. But where isconduct which can be charged upon them, because they have gone ly doing what their fathers and grandfathers and predecessors have thout objection or cavil?

ords, something has been said respecting the chapel at Rossendale, the only new foundation to which they have given any contribu- ly Lords, they explain that: they say that a memorial—which I defend, which, on the contrary, I should very much condemn—a ıl was presented, as it was alleged, to the Trustees, asking for a tion to this Rossendale chapel; and there is some language in that ıl which again, I say, instead of defending, I must condemn. But stees say that they knew nothing of that: that if there was such a ıl, it never came to their knowledge: and they only believe that ıs a memorial, because it is upon a memorial that such assistance is l. But this is one out of 237 instances.

, they are blamed on this account, that there being five exhibitions, hose go to Manchester College at York. That is the only place for ministers that are intended for Presbyterian congregations in the f England. It is an institution which has subsisted for a long course . The Trustees give those exhibitions, and the exhibitioners go the purpose of instruction. They are not at that place necessarily ıns. My Lords, I would read what is stated to be the doctrine aught to the pupils who study there. This is the advice that is Manchester College by the Theological Professor to his pupils: is invariable practice solemnly to charge his pupils, when they enter heological course of studies, in the name of the God of Truth, and ord Jesus Christ, who is the way, the truth and the life, in all their and inquiries of a religious nature, present or future, constantly, , impartially and conscientiously to attend to evidence, as it lies in Scriptures, or in the nature of things and the dictates of reason; ly guarding against the sallies of imagination and the fallacy of ill- conjecture: to admit, embrace or assent to no principle or senti- ught or advanced, but only as it shall appear upon the fullest tion to be supported by Revelation: to labour to banish from their ıll prejudice, prepossession and party-zeal: to study to live in peace

and love with all their fellow-christians, and steadily to assert for themselves, and freely to allow to others, the inalienable rights of judgment and conscience."

Now a Papist would be very much shocked by this, because he teaches that all are bound to believe what is taught by the Church; that you are not to read the Scriptures, or if you read the Scriptures, that you are not at all to exercise your judgment as to what the Scriptures reveal as the will of God, but that you are implicitly to believe what is taught by the priest. Therefore, a Papist might condemn the doctrine that is taught at Manchester College. But I venture to say that that is in the true spirit of the Protestant religion; that it desires those who are to be trained to the ministry, to read the Scriptures, as containing the revealed will of God, and from those Scriptures to learn the will of Heaven.

My Lords, for these reasons, I say that there was no ground whatever for removing any of the Trustees; that mere difference of belief could not be a sufficient ground; that there is no misconduct charged and proved; and that, with regard to religious belief, as far as the two Mr. Heywoods, Mr. Wood and Mr. Palmes are concerned, there is no pretence for saying that they are to be removed as Unitarians.

And now I come to another ground upon which I say that this Decree must be reversed, or at least that it must be altered. I say that it is impossible that it can stand as it is now framed; for it merely excludes a certain class from the benefit of the charity, but it does not in the slightest degree say who shall have the benefit of the charity. It excludes a certain class from being Trustees, as being disqualified; but it does not in the slightest degree say what shall be the qualification of a Trustee.

Now, I will assume, for the sake of argument, that the private opinions of Lady Hewley are to be the test, and that none are to participate in the charity except those who entertain her opinions, and that none are to be Trustees except those who entertain her opinions. But what are her opinions? We have an attempt made to prove her opinions upon one subject, namely, the Trinity: I say, that is left in doubt. We have an attempt made to prove her opinion upon another subject, with respect to Original Sin and the Atonement. If it was proved that she did believe in those doctrines, these are only two out of the many doctrines upon which the faith of Christians is founded. What were her opinions with respect to church discipline? What were her opinions with respect to the manner in which preachers should be ordained, the manner in which they should be divided into classes, in which their conduct should be inquired into, and in which their morals should be examined and supervised?

My Lords, discipline at that time of day was considered quite as important as doctrine; and churches that agreed with each other in doctrine, were at war with reference to discipline. They altogether disregarded those points upon which they agreed, and looked only to those points upon which they differed. I may remind your Lordships of the state of religious feeling in Scotland, during the reign of Charles the Second and the reign of James the Second. The Presbyterians and the Episcopalians, as far as doctrine was concerned, almost entirely agreed. But Episcopacy was abhorred by the Scotch of that day, and was considered as abominable as Popery itself. The Marquis of Argyle pronounced these his last words: he hated "Popery and Prelacy and all superstition whatsoever." Is it not to be inquired into, what were Lady Hewley's religious opinions upon other questions besides the Trinity and Original Sin? My Lords, the question of Predestination has divided the churches in the Christian world; well now, was she Calvinistic? Did she believe in eternal decrees, or was she an Arminian? When the Thirty-nine Articles were made, about half the clergy in the Church of England were Calvinistic, and the other half were Arminian; and the Articles were so framed as to suit both. But the same individual

not believe in both. The same individual could not be a Calvinist n Arminian. Now which was Lady Hewley? If her private opinions be the test by which you are to be governed, it is essentially neces- hat those opinions should be examined into, and that there should be a ration in the Decree of the Court as to what those opinions are, so that fter the charity may be properly administered.

Lords, what has been the consequence of this omission in the Decree? there have been claims made by the Independents in the Master's : those claims are met by the Presbyterians of the Church of Scotland, say, No, the Independents are not of the religion of Lady Hewley; ould have been shocked at the idea of an Independent partaking of ounty, because she thought that Presbyterian discipline was an essen- art of the Church of Christ; and therefore Independents shall not be ed to be Trustees or to participate in her bounty. Well, then, another f claimants come forward, who say that they are of the Secession ch; that they are orthodox Trinitarians; but that they are not in xion with the Church of Scotland; and therefore they ought to be red. What is the Master to do? The Master is totally at a loss Trustees to point out, or what rule to lay down with regard to the nistration of the charity, until your Lordships shall reform this Decree, upply its omissions and deficiencies. But, my Lords, it may be said the Information does not pray this; but that the Information only as to who shall be excluded. My Lords, I can already shew your hips, according to undoubted authority, that the Court is not merely ok to the prayer of the Information, but that in a Charity case it is *ex officio* and *mero motu*, all that is necessary for the due administra- f the charity.

the case of the Attorney-General *v.* Jeanes, which is in 1st Atkins, t was said by Lord Hardwicke, "That in an Information by the Attor- eneral for the regulation of a charity, it is the business of the Court e a proper direction as to the charity, without any regard at all to the iety or impropriety of the prayer of the Information." Then, if this y cannot be administered without a declaration as to who are the ts of it, and what are to be the principles of the Trustees, it was indis- bly necessary that there should be a declaration upon this subject in ecree, although there was no prayer for that in the Information.

ain, in the Attorney-General *v.* Scott, which is in 1st Vesey Senior, Lord Hardwicke says, "As to the Information, that is not to be dis- d, whether what is prayed is properly prayed or not; for though the ular relief prayed is wrong, the Information by the Attorney-General to be dismissed if that charity wants any direction."

erefore, my Lords, even if the prayer is wrong, and if there be no r for that which ought to be done, the Court is still to interfere and he proper directions.

the Attorney-General *v.* Mayor of Stamford, a note of which is to be in the Appendix to Swanston's Reports, 2nd volume, p. 591,—there, ords, a charity was established on an Information praying relief, which efused; the relief which was prayed was refused, but still the charity stablished. That case occurred in the year 1747, but there is a short of it in the 2nd volume, p. 591.

ain, in the case of the Attorney-General *v.* Brooke, in 18 Vesey, 324, Eldon says the rule in cases of charity is, that a general prayer is ient, and the Court will give the relief adapted to the case.

w what is the relief adapted to this case? If the opinions of Lady ey be the test, and a declaration of what she considered necessary, no Trustees shall be chosen who do not entertain the same opinions; ereafter, none shall be permitted to be the recipients of her bounty t those who entertain those opinions. But at present the Master

knows only negatively with regard to two doctrines, but he does not know affirmatively with regard to many of the others; and the charity cannot be administered if this Decree was simply affirmed: the very next day there must be another Information filed, there must be other Relators discovered, and an application must be again made to a Court of Equity to supply the deficiencies under which this Decree labours.

My Lords, therefore, upon some of the points we do humbly submit to your Lordships, this Decree cannot be supported, even assuming that my learned friend has established that for which he contends—that there ought to have been inquiries as to what were the opinions of Lady Hewley; and there ought to have been a direction, that according to those opinions the Trustees should be appointed and the charities administered.

My Lords, I now come to make a few observations upon the Judgments of the learned Judges who have decided this case.

My Lords, of course I shall do so with the most sincere respect for their judicial character, but at the same time, my Lords, with that freedom which it is my duty to exercise in representing my clients.

My Lords, his Honour the Vice-Chancellor begins with relying upon the will of Sir John Hewley. Now, my Lords, what effect could the will of Sir John Hewley have upon the construction to be put upon deeds executed by Lady Hewley, long after he was in his grave? He reasons thus: Lady Hewley was the wife of Sir John Hewley; Sir John Hewley was a Trinitarian, a believer in the Trinity, and therefore Lady Hewley must have been the same; and Lady Hewley being a Trinitarian and a believer in the doctrine of the Atonement, I will put a different construction upon her deeds from that which I should have done if she had been of a different religious persuasion.—Now, the will of Sir John Hewley affords strong evidence to support the inference that he believed in the doctrine of the Atonement. He says, "This is the last will and testament of Sir John Hewley, of the city of York, who being, through God's mercy, of perfect memory," and so on: "First, I commend my spirit to God who gave it, hoping to find mercy to me a sinner, and to be saved by the only merits and mediation of Jesus Christ, my alone Saviour and Redeemer." Then, my Lords, his Honour finds that the manner in which the will is witnessed shews that Sir John Hewley was a Trinitarian—and that Sir John being a Trinitarian, that Dame Hewley must have been the same—because Sir John finishes his will thus: "Witness my hand and seal the 24th day of June, in the year of our Lord *God*, 1682;" and because he uses the expression "Anno Domini," it is supposed he must necessarily be a Trinitarian.

Mr. KNIGHT BRUCE.—No, "Anno Domini Dei."

Mr. ATTORNEY-GENERAL.—Very well, "Anno Domini Dei." He then refers to her own will, which is no part of the case by which this foundation is established. There is no reference in the deeds to her will, nor in the will to the deeds. He then goes on to Dr. Colton's will, and reasons that, as he was her minister, all the doctrines he believed, she must likewise have believed. He then comes to Bowles's Catechism, which I allow was a fit subject to be taken into consideration; but from that he draws the inference, not only as to her belief, but as to the construction to be put upon the deed with respect to all the objects of her charity. Then, having made out that she is a Trinitarian, as he calls it, that she is a Presbyterian, he then proceeds to consider what are the doctrines of the Presbyterians, and he says, "I appeal to the testimony given before a Committee of the House of Commons in 1825, for the truth of this proposition, that the doctrine of those Presbyterians whom we should commonly term Presbyterians is this, that the only effectual view of religion, for the purpose of inducing men to soften their hearts and turn to God, is the view of the Father's love given by permitting his Son to appear upon earth and suffer as a man." His Honour, therefore, refers to certain evidence recently given, to find out the

faith of Lady Hewley; he refers to certain evidence given before a Committee of the Lords and Commons, with respect to the religious belief of the Presbyterians now in Ireland. It is well known that those Irish Presbyterians are an off-set from the Scotch Presbyterian Kirk, and that they adhere to the tests and forms of faith which were adhered to by those from whom they are sprung. But how does that afford any legitimate argument as to what were the habits of the Presbyterians in 1704—*the English* Presbyterians in the year 1704—when this deed was executed by Lady Hewley? Then, he comes to that which was mentioned as an Improved Version of the Scriptures, which had been offered in evidence on the part of the Relators, and which was withdrawn; and the only ground upon which the Improved Version of the New Testament can be brought forward against my clients, is this, that two or three of them are subscribers to an Association which admits it into a list of books for circulation.

LORD-CHANCELLOR.—I must interrupt you for a short time.

Several Peers were then introduced, and took the oaths and their seats; and it being then near four o'clock, the further hearing of this case was adjourned till to-morrow.

SECOND DAY.

Mr. ATTORNEY-GENERAL.—My Lords, in commenting upon the Judgment of his Honour the Vice-Chancellor, I had arrived at that upon which his Honour places the main stress, which is, the Improved Version of the New Testament; and I must use the freedom to say, that a most undue importance has been given to that book. It has been suggested that this is the canon of the Unitarians, and that when the Unitarians say, "they believe in the Scriptures," they believe in Scriptures of their own. My Lords, this Version of the New Testament is not used in any Unitarian congregation in England; and upon that fact I am ready to rest the effect of this Appeal. The Version of the Scriptures used in the Unitarian congregations is that which is used in the cathedrals and churches in England, the Translation of the Bible in the time of James the First, authorized by law; that is used, and that alone.

My Lords, this book, called an Improved Version of the New Testament, was offered in evidence during the hearing before the Vice-Chancellor. It was objected to; it was withdrawn, as not being evidence, and yet it is made the chief ground of the Judgment of the Vice-Chancellor! Now, I would draw your Lordships' attention to the words his Honour employed, and which his Honour thought justified him in assigning so much weight to this Translation of the Scriptures. He says, "The book mentioned in the Catalogue in the Sixth Report of the Unitarian Society, cannot come under the description of a publication of Christ's holy Gospel." My Lords, his Honour meant to say, that because in the catalogue of books in which among others there is this Translation of Scripture, it is to be inferred that those who subscribed to that Society were not preachers of Christ's holy Gospel. Again, my Lords, his Honour says, "I find by the evidence, that Mr. Wellbeloved and Mr. Kenrick and some third Trustee, are subscribers to the Unitarian Society, the Report of which enumerated amongst the books circulated by them this Improved Version of the Scriptures, as it is called." And finally, my Lords, his Honour says this: "I have no evidence whatever to induce me to believe that he, Mr. Wellbeloved, had any thing more to do with the Improved Version than assisting by subscription in the publication of it; nor have I ever heard, nor have I the slightest conception, who were the fabricators of the book; but I am quite certain Lady Hewley never would have thought that this book did contain 'Christ's holy Gospel,' or that the persons who disseminate this book were to be considered as disseminators of 'Christ's holy Gospel;'" and therefore the Decree must be so and

so. *Esto*, my Lords, that Lady Hewley would not have considered that the persons who were the authors of this Translation of the New Testament, or who approved of it and considered it a just Translation of Scripture, were the fit objects of her bounty, notwithstanding no evidence was before the Court of Chancery, nor is any evidence now before your Lordships, to shew that any one single individual of those Trustees ever approved or adopted or encouraged that publication, so as to afford a fair inference that that individual maintained the same sentiments which appear in that Translation. Why, my Lords, your Lordships, for any thing I know, may, being perfectly orthodox, have subscribed to books that may contain heretical doctrines. Your Lordships may, for any thing I know, have subscribed to a Translation of the Koran, without incurring any suspicion that your Lordships are Mahometans. Is it necessary, then, my Lords, for me to enter into the merits of this Translation of Scripture? His Honour went a very great length, and shewed a very profound and delicate knowledge of the Greek language, by his criticisms upon that Translation. But, my Lords, is it at all necessary that I should attempt to follow him? Am I to discuss before your Lordships whether the words εγω σημερον γεγεννηκα σε may mean, "I have adopted or declared," as Schleusner says, or whether it means, "I have this day begotten thee"? These are criticisms that seem to me to be entirely beside the mark, and that can form no ingredient whatever in your Lordships' Judgment. But, my Lords, it is upon these criticisms his Honour proceeds; for having proved that this was an unfaithful Translation of Scripture, he goes on to say thus,—"Therefore, *ergo*, this is the ratio decidendi; therefore, my Decree must in substance be, that the persons who deny the divinity of our Saviour's person, and who deny the doctrine of Original Sin, as it is generally understood, are not entitled to participate in Lady Hewley's charity; and that the first set of Trustees must be removed: I therefore think that all the Trustees who are Dissenters, and who deny the doctrine of our Saviour's Divinity, and who deny the doctrine of Original Sin, must be removed: and though there is no objection personally to Mr. Palmes, yet as it appears that he is a member of the Church of England, he ought not to be continued a Trustee."

According to this Decree, therefore, founded upon the Improved Version of Scripture, with which I say the Trustees are not at all connected, so as to shew that any of them approved of that Translation, that any one of them ever read it, that it is used in any Unitarian congregation, which evidence it was impossible to give,—upon that foundation proceeds this Decree, which excludes from Lady Hewley's bounty all who denied the doctrine of the Trinity or Original Sin, and removes the whole of those Trustees, both the Grand Trustees and the Trustees of the almshouse; and removed from the office of Trustee of the almshouse, Mr. Palmes, because he was a member of the Church of England.

My Lords, this case came afterwards before Lord Lyndhurst: I have no report of what took place when it came before my Lord Brougham, and as his Lordship gave no Judgment upon it, I should not be justified in at all referring to any thing which took place before his Lordship.

Lord BROUGHAM.—I decided only two or three interlocutory points which came before me, on exceptions taken to the answers. One or two of the parties refused to answer the interrogatories of the Information respecting their being Unitarians, and I overruled their refusal and compelled them to answer.

Mr. ATTORNEY-GENERAL.—A most important decision of my Lord-Chancellor's, upon which I mainly rely. My Lords, the question here is this, Are those who deny the doctrine of the Trinity, and those who deny Original Sin, Christians, or are they not? Are they supposed to deny the Christian religion, because they do not believe in those peculiar tenets? My Lords, if they are not Christians, on account of that unbelief, they are

guilty of a misdemeanor; because Christianity being part and parcel of the law of the land, to deny any thing which amounts to a denial of Christianity, amounts to a misdemeanor. My Lords, those defendants being thus interrogated upon their faith on those particular tenets, if their acknowledgment that they did not believe in the doctrine of the Trinity, and that they did not believe in Original Sin, amounted to a denial of Christianity, they clearly were not bound to answer. When the matter came on before the Lord-Chancellor, it was contended on two grounds that they were not bound to answer; first, that the private belief of a Trustee is not to be inquired into, that you are to see whether he faithfully and diligently and properly exercises the functions that are vested in him, and that it would be dangerous and might be most injurious to put him upon his oath to declare what are his opinions on any particular doctrinal question: but another ground that was urged before his Lordship was this, that if the doctrine prevailed which was contended for on the other side of the bar, namely, that at common law, to deny the divinity of our Saviour was a misdemeanor, they would subject themselves to penalties if they confessed that that which was stated was their belief.

Lord BROUGHAM.—I will tell you the view I took of it. To deny is one thing, but to form a belief or opinion upon a doctrine is another thing; and if a person is called upon by the order of a Court of Justice to declare what is his opinion, whatever that opinion may be, it appeared to me that though his denial of that doctrine might be a misdemeanor, it was not so in the case of his declaring his opinion when thus called upon.

Mr. ATTORNEY-GENERAL.—But this private belief being known, would be strong evidence to go to a jury on an indictment for denying this doctrine; and let me remind your Lordship that Mr. Wellbeloved was one of those who were required to give that answer,—Mr. Wellbeloved, who from the pulpit, Sunday after Sunday, was called upon to declare the doctrines he believed. This answer might be used as explaining the doctrine he promulgated to mankind; and if it were a misdemeanor at common law to preach against the doctrine of the Trinity, Mr. Wellbeloved might have been indicted for that offence; and the answer he gave to this Information might have been conclusive evidence against him.

But, my Lords, after full deliberation, both the objections were repelled. The noble and learned Judge who had heard the argument, solemnly ordered and decreed that Mr. Wellbeloved was bound to answer, and that all the other defendants were bound to answer, because the avowal of those doctrines would not subject them to penalties.

Lord BROUGHAM.—It was, I presume, in virtue of that order of mine, allowing the exceptions to the sufficiency of the answer, that that answer was put in by Mr. Wellbeloved which you read yesterday. I had never seen it before. It was the answer to the amended Information, was it not?

Mr. ATTORNEY-GENERAL.—It was, my Lord. This proves that in the view of the Court, the Unitarians, although they may be heterodox, although they may be erring Christians, are Christians; and that they are to be acknowledged by us as our Christian brethren.

I come now, my Lords, to what took place when Judgment was given by Lord Lyndhurst. He had the assistance of two most learned Judges, Mr. Baron Alderson and Mr. Justice Patteson. Mr. Baron Alderson delivered the opinion of himself and the learned Judge with whom he was associated; and he delivered a very luminous Judgment, as might be expected from him. But, my Lords, on referring to that Judgment, you will find that the private opinions of Lady Hewley are mainly relied upon; and that the Judgment does not proceed, as I humbly submit to your Lordships it must and ought to proceed, on the construction of the deed. But, my Lords, as that opinion of the learned Judges was not delivered by the Judge who was to pronounce the Judgment of the Court, I will pass it over, and proceed to the grounds

that were laid down by Lord Lyndhurst, and upon which his Judgment rested.

My Lords, Lord Lyndhurst very much relied upon the case of the Attorney-general *v.* Pearson, as I shall shew your Lordships presently. Lord Lyndhurst's Judgment proceeded upon the private opinions of Lady Hewley; he laid down that as a maxim that could not be controverted———

Lord BROUGHAM.—The Attorney-General *v.* Pearson is in Merivale's Reports, is it not?

Mr. ATTORNEY-GENERAL.—Yes, my Lord, in 3 Merivale, p. 352. Now, my Lords, Lord Lyndhurst, having proceeded upon the principle that you were to look to the private opinions of the Founder, says that that doctrine is clearly established by the case of the Attorney-General *v.* Pearson. To that case I will now refer your Lordships. I will read, my Lords, the marginal note, which seems to me to be the fairest mode of bringing before your Lordships what is supposed to have been there determined, just to make it intelligible to your Lordships. It was an Information and a Bill that was filed, which respected a chapel at Wolverhampton that had been founded in the year 1701, and there were one set who contended to have the possession,—these were the plaintiffs in this Information and Bill. The defendants were another set, who contended that they were entitled to the possession of that chapel. "Information and Bill to quiet the possession of the Relators and Plaintiffs, one claiming as the surviving Trustee, the other as Minister of a Protestant Dissenting meeting-house, for an appointment of new Trustees and an Injunction to stay proceedings in ejectment by the Defendants, claiming also to be Trustees of the meeting-house. Upon motion for an Injunction, it appearing that the meeting-house was erected in the year 1701, under a Trust-deed, whereby the purpose was declared to be, for the worship and service of God, the Plaintiffs and Relators contending from the purpose so expressed, that the intention was for promoting the doctrine of the Holy Trinity, and that the Trust should not be diverted from the purpose for which it was intended; the Defendants insisting that the intention was as general as the purpose expressed, and had no regard to any particular tenets; it being also made a question, whether a Trust for supporting Unitarian worship is legal and can be supported; and it being further disputed who, according to the true construction of the deed, were entitled as Trustees to the possession; and whether the Minister of a Dissenting congregation elected for a limited period is afterwards removable at pleasure; and also, as to the construction of the deed, and as to an alleged agreement or understanding between the parties with regard to such removal,—the Injunction was granted (upon the parties undertaking to abide by such order as the Court should thereafter make); and it was referred to the Master to inquire in whom the legal estate was vested, the particular object (with respect to worship and doctrine) for which the Trust was created, the usage of Protestant Dissenters as to the election of ministers and the duration of their office, and whether any agreement or understanding relative thereto subsisted between the parties."

Now, my Lords, is there any thing decided there, to justify the position, that where there are formal deeds, founding a charity and fully expressing the wish and intention of the Founder, you are not to construe those deeds by what appears upon the face of the deeds, but you are to inquire into what was the private opinion of the Founder himself?—for this, my Lords, will not apply only to charities for religious purposes; it will apply to all charities. And if you are to inquire into the private opinion of the Founder, with respect to religious charities, you must inquire also into the private opinion of the Founder with regard to whom he intended to be the objects of his bounty, whether they should be from this country or that country, of this sex or of that sex, of this profession or of that profession; it would lead to interminable confusion. I say, my Lords, that from this case no such

e is to be deduced. I apprehend this meeting-house was for the use congregation at Wolverhampton in successive generations, there nothing on the will to confine it, but there being a deed which stated ly that it was for the worship and service of God. Now if that had creed in the most formal manner in that case, if the Court had in- as to what were the original opinions of the Founder, so as to get at jects of the charity, it would be no precedent for allowing such an in a case of this sort, where there are formal and complete deeds ing most distinctly the intention of the person who founded the . In a case of this sort, where it is a chapel for the service of Al- God, it may be difficult to say what should be the form of religious which was intended, unless you inquire into the original opinions person who founded the charity: but there, I should say, you would uire into his private opinions, not even then. You cannot go into set, and if any person had overheard him addressing a prayer to according to a particular creed, that would not be a ground for put- different construction upon the deed by which he had founded the , though it were proved that he was in communion with a sect of ans of totally different principles and belief. The proper object, even the words were so general, would be to inquire as to what was said at was done when the charity was founded. And I do not deny that e of that sort, it might be material to shew that the chapel was esta- for preaching and propagating a particular class of doctrinal opi- but even there, my Lords, I say, the mere opinion of the Founder or Donor cannot possibly be admitted. You must know what the Foun- d and did with regard to this charity; not what the Donor may have t or said at another time, when that charity was not at all in his plation.

Lords, this case of the Attorney-General *v.* Pearson, is the only autho- ich is referred to; which is not sufficient to justify such a doctrine. der which was pronounced by Lord Eldon was not acted upon; this nt to sleep, and slept between twenty and thirty years; and it was vived by Lady Hewley's case. It then, again, came before his r the Vice-Chancellor, who adhered to the doctrines he had laid down case of Lady Hewley, and therefore it cannot be considered as an nal authority, upon which my learned friends can rely. It was t by appeal from his Honour the Vice-Chancellor before the present hancellor. The present Lord-Chancellor suspended his Judgment, informed, until the House of Lords should decide in Lady Hewley's but his Lordship did make an interlocutory observation which I s of considerable importance, because his Lordship said, addressing lliam Horne, "Sir William Horne, will it not descend to the Trustees h form of worship as the congregation for the time being should ? Then, under the now existing law, they might act in this way; the necessary consequence of the recent alteration in the law." I do not say that that noble and learned Lord is in the slightest bound by the observation he then made; but I respectfully bring it Lordship's notice and the notice of your Lordships; and if you apply Lady Hewley's case, it appears to me to afford a strong argument thority for the Trustees in Lady Hewley's case having contributed er funds to such form of worship as the congregation should from time select. They are to support "godly preachers of Christ's ospel for the time being," which, I say, is such as the law will tole- ich as the congregations shall prefer, and by whom, within those Christ's holy Gospel is preached.

Lords, let me draw your attention more particularly to what is laid y Lord Lyndhurst. His Lordship says this,—"The first question sideration, in order to lead us to a correct conclusion upon this point,

is, as to the particular religious opinions of Lady Hewley, the Foundress of this charity." Not what is to be found in the deed, not even what she said or did at the time that the charity was founded, but as to her particular religious opinions. So that, according to this, if I could have proved that Lady Hewley was an Unitarian, though she went to St. Saviour-Gate chapel at York, I should at once be entitled to have this Information dismissed with costs. His Lordship says, "There can be no doubt that she was in her religious faith and opinions a Presbyterian. It is a matter of history that she was so. It is admitted by the answer of Mr. Wellbeloved and others of the defendants. It is proved by the evidence in the cause; by the testimony of those respectable witnesses to whom the learned Judge has referred. It is not contested by any contradictory evidence. It is proved that she attended the chapel which she herself, I believe, endowed, St. Saviour-Gate chapel, and which is admitted to have been a Presbyterian chapel. Dr. Colton, the preacher at that chapel, was an acknowledged Presbyterian. He was her religious adviser; he was the executor to her will; he preached her funeral sermon: all these circumstances lead satisfactorily to the conclusion that she was in her opinions a Presbyterian."

Now, this is the mode of discovering what were her peculiar private opinions. Your Lordships will find she had made a will in the year 1710, and if that will had expressed that she was a Unitarian, that would have been evidence for me, and conclusive evidence that this Information could not be maintained.

Lord Lyndhurst goes on,—"This being so, the next question that presents itself is, What were the doctrines and opinions of the Presbyterians of that time?" "There is another consideration," he afterwards says, "that presents itself, arising out of the situation and character of Lady Hewley,"—and he goes on to shew that she was a Presbyterian. If she had been an Unitarian,—"It must have come down to us as a matter of history, had she entertained Unitarian opinions, as in the case of Firmin, who resembled her in the benevolence of his disposition and character. But it is not necessary to rely upon probabilities in this case; we have direct evidence of the fact:"—so that, according to this, if you had come with a tradition that she was an Unitarian, or it could have been proved by our evidence that she was an Unitarian, that would have been admissible evidence; and if that had been left in doubt according to this evidence, an issue would have been directed to be tried at the York assizes, as to whether Lady Hewley was an Unitarian or a Presbyterian, whether in her private belief and conscience she adhered to the one doctrine or the other:—and on the trial of that issue it is quite clear that all the evidence that could have been adapted to shew what was her private opinion would have been admissible; for your Lordships will observe neither Lord Lyndhurst nor his Honour the Vice-Chancellor confined themselves to what were her private opinions in the year 1704 or 1707; they go over her whole life; and it might happen to her, as it has happened to many others, to vary in their opinion at different periods of their lives, as to those peculiar tenets.

But Lord Lyndhurst goes on to say, "But the evidence as to this important part of the case does not rest here. Dr. Colton is admitted to have been a Trinitarian. No doubt is entertained upon this point. Dr. Colton must have been a Trinitarian, because, as he was the preacher at St. Saviour-Gate chapel, he, of course, subscribed the Articles, agreeably to the 17th section of the Toleration Act, and we cannot presume that he would have subscribed those Articles fraudulently, more particularly when we consider his character for learning and piety." Then he goes on to shew that Dr. Colton must have been a Trinitarian, from subscribing the Articles, and that as she heard him, she also must have been a Trinitarian; and therefore a different construction is to be put upon the deed, than would have been if it had appeared she was an Unitarian. His Lordship goes on to say, "This then

being the case, we are prepared for the more satisfactory consideration of the next question, namely, What did she mean by godly preaching of Christ's holy Gospel"?

His Lordship proceeds next to put a construction upon the deed: "What did she mean by godly preachers of Christ's holy Gospel"? Then, how is he to get at that? He gets at that meaning by her private opinion, and having got, as he imagines, at her private opinion, that she was a Trinitarian, he puts upon those words a construction and sense which they would not otherwise have had. "What were the doctrines the preaching of which she meant to promote and encourage? Is it reasonable to suppose, is it at all probable, that she intended to found a charity, and to bestow her property to promote the preaching of doctrines directly at variance with her own opinions?" "Can we suppose then, I repeat it, that this pious lady would have given her funds for the purpose of promoting and encouraging the preaching of doctrines in opposition to her own opinions, in respect to points which have been universally considered as essential in matters of religious belief? At least, it would require some distinct evidence, or some reasoning which I have not heard, and which does not occur to me, to justify us in coming to such a conclusion. All the probabilities and presumptions are the other way, and as a question of fact, I feel myself compelled to conclude that such could not have been her view and intention."

My Lords, finally, upon this part of the case, he says, "I feel bound, therefore, for the reasons which I have stated, having first established to my own satisfaction that Lady Hewley was in her religious opinions——." This removes all doubt as to the correctness of what I laid down as the ratio decidendi of Lord Lyndhurst; he says in these words, "I feel bound, therefore, for the reasons which I have stated, having first established to my own satisfaction that Lady Hewley was in her religious opinions and belief a Trinitarian, to come to the conclusion, that she never intended that her charity should be applied for the purpose of promoting or encouraging the preaching of Unitarian doctrines." Well, if her private opinions are to be regarded, then the Judgment is to be supported; but this is a clear intimation of Lord Lyndhurst, that he puts this narrow construction upon the deed, merely or chiefly upon account of the private opinions that he thinks he has traced in Lady Hewley. It comes then to the question, whether the will of the Foundress is to be gathered from what is expressed upon the deeds by which the charity is founded, or whether you are to travel into extraneous evidence to discover what may have been in any period in the life of the Foundress the opinions she entertained.

Now, my Lords, I must likewise observe with reference to the Judgment of Lord Lyndhurst, as it seems to me,—of course I speak with most unfeigned respect,—he does not at all discriminate between the different objects of the charity; he does not discriminate between the preaching and the eleemosynary relief; and even if it were true that, according to Lady Hewley's opinions, if they were to be regarded, she would not give any thing for the purpose of propagating doctrines contrary to her own judgment, does it follow that she would not allow a morsel of bread to be given to a starving person, because that person did not believe in the doctrine of the Trinity or Original Sin? Now I most earnestly wish your Lordships to bear in mind, that one of the objects of this charity was to relieve destitute persons in distress: they must be godly persons, and godly persons in distress; but even if the Decree could be supported as far as preaching is concerned, I do not see how by possibility it could be supported with regard to those who were destitute, and on that account to receive charitable relief.

Now, my Lords, as to Lord Lyndhurst's removal of the Trustees, he concurs likewise in that part of the Decree of his Honour, the Vice-Chancellor, but, my Lords, for different reasons, and there departing from what was laid down by Mr. Baron Alderson, as to what he thought must be the hinge of this part of the case.

Lord BROUGHAM.—The opinion of himself and Mr. Justice Patteson jointly.

Mr. ATTORNEY-GENERAL.—Exactly so. His Honour the Vice-Chancellor imputes no misconduct to the Trustees; and Mr. Baron Alderson, although he does not presume to give any opinion as to whether the Trustees ought to be removed,—that being a purely equitable question, for a Judge setting in Equity, upon which a Common-Law Judge could not give any opinion,—yet, my Lords, he says, expressing his own opinion and that of Mr. Justice Patteson,—"There is another part of the case which relates to the course your Lordship as a Judge in Equity ought to pursue, as to retaining or removing the Trustees, in case your Lordship's opinion should agree with and confirm that which we have now delivered." Now here is the test.

Lord BROUGHAM.—It is not quite correct to say that it is a matter of course that an Equity Judge cannot ask the Common-Law Judges their opinion upon an Equity point. When he has the assistance of Common-Law Judges, he may ask their opinion upon the whole case, and you will see in some of the cases in Atkyns, that the Equity Judge puts the whole of the equity to the Judges; but it is quite true that in point of fact these learned Judges do withdraw from the consideration of that question.

Mr. ATTORNEY-GENERAL.—I am much obliged to your Lordship for that suggestion. But then, my Lords, what do they say it is to turn upon? "That," that is, the removal of the Trustees, "will depend of course"—they consider it quite plain—"on the point whether your Lordship is satisfied that those Trustees do in fact profess opinions differing from those to the promotion of which Lady Hewley devoted her foundation, and whether in that case it is the duty of a Court of Equity to remove them from a trust which they cannot so properly discharge, as persons whose opinions concur with those of the Foundress." My Lords, it is not upon this that Lord Lyndhurst proceeds. He proceeds upon this ground,—that the Trustees have shewn an undue bias in favour of the Unitarians, and have given them an unjust proportion of the funds of the charity. Now, my Lords, I must say, with the most sincere respect for that Judgment, that that really is not supported by the evidence. My Lords, many people have supposed—of course none of your Lordships suppose it—that this charity was confined to the St. Saviour-Gate chapel. It is nothing of the sort: that was one of 237 chapels, to the pastors of which contribution was made; and of those only 37 are charged with being Unitarians. They *were* Presbyterian; they are still called Presbyterian; but it is supposed, and may be admitted, that they have since become Unitarian: but it is only 37 out of 237.

Then, my Lords, a complaint has been made that an undue sum was allowed to Mr. Wellbeloved, and that Mr. Wellbeloved was a pampered priest who ought to be stripped of the wealth which was conferred upon him. But what is allowed to Mr. Wellbeloved? £80 a year: Lady Hewley herself having allowed £40 a year to — Hotham, the pastor in her time, and £60 a year having been allowed to the pastor who succeeded, and then £80 to Mr. Wellbeloved, the third in the order of succession, when the funds of the charity have been more than trebled during that time. But then, it is said, that Mr. Wellbeloved has a larger proportion than the others. Why? Because it was so in the time of Lady Hewley, and she wished that the benefactions that she had provided in her life-time should be continued after her death. As to the value of what is given to the Unitarians, taking in Mr. Wellbeloved's salary, the number assisted is 30 out of 237. But Mr. Wellbeloved has (following the expressed intention of the Foundress) a larger sum than is given to other pastors; but, taking in the aggregate amount of all that is given to Unitarians, including Mr. Wellbeloved, it is not one-fourth of the funds of the charity.

Lord BROUGHAM.—What is the total income of the charity?

Mr. ATTORNEY-GENERAL.—About £2300 a year; and of that there is not one-fourth that is distributed among Unitarians. A part goes among the Baptists; the rest goes to the Independents—to those Independents who, having had such a liberal share of her bounty, wish now to grasp the whole.

My Lords, I have only now to remind your Lordships, with respect to the costs of the Trustees. And I say that that is another point upon which I am justified in saying that this Decree ought not to be supported. Where there are Charity Informations, unless there is some serious misconduct to be ascribed to the Trustees, I believe, my Lords, the invariable practice is, that their costs are paid out of the Charity fund. Such was the rule adopted by his Honour the Vice-Chancellor. He thought that no misconduct could be imputed to those Trustees; he therefore allowed that their costs should be paid out of the fund; himself recommending an Appeal. There was an Appeal. Was that Appeal wrong? Were the Trustees to be blamed in a case of such magnitude and such difficulty, and when the Decree, right or wrong, proceeded chiefly upon that which I humbly say ought not to have been any ingredient in the Decree, namely, the Improved Version of the Christian Scriptures: under all these circumstances, can it be said that these Trustees did wrong in appealing from the Decree of his Honour the Vice-Chancellor, and praying that it might be reviewed by the Lord-Chancellor? If they were not wrong in taking the opinion of a higher Court, in a matter of such difficulty and of such peculiarity, then I say it was wrong to throw upon them the costs which they thereby incurred; the consequence being, that Mr. Wood and others, to whom no blame could possibly be imputed, with respect to whom it was impossible that they could have been guilty of any misconduct, are obliged to pay out of their own pockets a very considerable sum for merely taking the opinion of a Court of Equity as to how they in future should manage the charity of which they had been elected Trustees.

My Lords, for these reasons, I humbly hope that this Decree will be entirely reversed, that the Information will be dismissed, and that your Lordships will come to the conclusion that there was no ground for it whatever. It does not become me to anticipate with any confidence what may be the Judgment of any Court before which I have the honour to practise. If your Lordships should not be of that opinion, then I call upon you to revise this Decree with respect to the objects of the charity, who are to receive eleemosynary relief according to the foundation of Lady Hewley. I call upon you to revise the Decree with regard to the condition that is now put upon the introduction of alms-women, that they must believe in the doctrine of the Trinity, no such condition being imposed by the will of the Foundress. I call upon you likewise, my Lords, to review the Decree in this, that on account of its omissions and defects it cannot be carried into effect. It is impossible, if it were to stand, that we could know who are to be excluded, and who are to be included. That is left in entire mystery. The Master has been unable to execute the Decree under the directions of the Vice-Chancellor, and unless your Lordships can reform it, it never can be carried into execution. I likewise request that your Lordships will consider that question with regard to the costs, and relieve the Trustees from that which I consider a great injustice, that they should be saddled with costs, having been guilty of no misconduct. But I cannot help entertaining the hope that your Lordships will reverse this Decree altogether, and that you will come to the conclusion, that although Unitarians may be erring Christians, still that they are Christians.

Mr. SOLICITOR-GENERAL.—My Lords, I have the honour to appear with my learned friend the Attorney-General in support of this Appeal. And although he has occupied a considerable portion of your Lordships' time, I am sure that you will feel that the importance of the case is such, and its ramifications are so extensive and so all-pervading throughout all the establishments of this country, that I shall be justified in still occupying a portion of your Lordships' time. My Lords, when I say that the ramifications of this question are most extensive, I am not speaking upon mere theoretical surmise of what may happen. Since the Decree that has been made in this case, numerous Informations have been either filed or threatened, and only await the ultimate decision of your Lordships;—Informations which tend to unravel and unsettle that which has now been considered as settled for above a century,—which shake the foundations by which most extensive societies have been benefiting, and which they have all along supposed, at least, that they were enjoying in conformity with the law of the land. My Lords, if what has been done throughout all the old Presbyterian foundations in the country, has all been done in error, it may be the duty of your Lordships, as the highest tribunal of the country, to set that error right; but I am quite sure that your Lordships will feel that it is a case on which it is your bounden duty to pause, before you adopt a course which shall have effects so extensive, and to many so highly injurious.

My Lords, I shall follow in a great measure, endeavouring not to go over again the ground which has been trodden by my learned friend, the same course which he has pursued. And I will, in the first place, call your Lordships' attention to the original foundation-deed, with a view of satisfying your Lordships that, construing that deed in the ordinary mode in which deeds are construed, and which, I respectfully submit, is the only mode in which they can be construed, namely, by interpreting them within their own four corners, there is no question whatsoever but that the parties who have heretofore been enjoying the benefit of this charity, have been properly enjoying it.

My Lords, the deed, as your Lordships are aware, being dated in 1704, is made between Lady Hewley of the first part and certain Trustees of the other part. It is not quite an immaterial consideration, that of those Trustees, many of them appear to have been gentlemen living in the Metropolis; two only, I think, living in Yorkshire. The deed recites deeds of even date, by which part of the property had been conveyed to the Trustees, and then directs the trusts upon which they were to hold the property, viz. to those four purposes to which the attention of your Lordships has been so often called;—first, they were to apply the profits to such and so many poor and godly preachers, for the time being, of Christ's holy Gospel, and to such poor and godly widows of poor and godly preachers of Christ's holy Gospel, as the Trustees shall think fit; secondly, for the encouragement or promotion of the preaching of Christ's holy Gospel in poor places; thirdly, for exhibitions to young men educating for the ministry; and the surplus for godly persons in distress, being fit objects of Lady Hewley's charity: there is a fifth object—they are to have particular regard to the county of York and the four Northern counties.

Now, my Lords, that is the whole of the deed. There are ordinary clauses afterwards, to appoint the Treasurer; the mode of auditing accounts; and when any Trustee died, somebody was to be appointed as Manager, as she calls it—that is, to be a Trustee, but not to have the property conveyed to him; and when the Trustees were reduced to a certain number, the survivors were to convey to new Trustees, that they might hold the property as joint Trustees; and then there are directions with respect to notice of meeting and so on: but the substantial part of the deed is this,— that the Trustees are to apply the rents in the first place "to poor and godly preachers, for

the time being, of Christ's holy Gospel, and to such poor and godly widows, for the time being, of poor and godly preachers of Christ's holy Gospel." And the first question which your Lordships will have to determine is this: Suppose Lady Hewley had died the day after the execution of that deed, and your Lordships knew nothing more of her,—that such a person had never been heard of, except as being the party to that deed,—how would that deed be construed? My Lords, I say that, upon the rule and principles of law with which your Lordships are familiar, it could not be construed in any other mode than this—by reading the deed and seeing what was contained within its four corners.

My Lords, I consider it no receding from that proposition to admit that, for the purpose of construing it, you might look to what the circumstances were under which it was executed; that is to say, in order to ascertain what the Foundress, the party executing the deed, meant by the words which she has used, you might look to all those circumstances by which she was surrounded at the time she used them, in order that you might know what she knew at the time she executed the deed, and in order to ascertain the meaning of the words. If the deed is of considerable antiquity, it may be competent to your Lordships, just as if the words were used in a foreign language, to take the opinions of persons of art, conversant with ancient deeds, to ascertain what the meaning of particular expressions was at that particular age. My Lords, I concede both those points; but beyond that, I can concede nothing,—unless there is some principle to be applied in the interpretation of this deed, which is not applied in the interpretation of deeds in general.

Lord WYNFORD.—Do you know any instance of any person being asked his opinion what was the meaning of particular words at particular times?

Lord BROUGHAM.—With respect to hand-writings of different ages, evidence is admitted.

Mr. SOLICITOR-GENERAL.—Whether it is matter of evidence or matter of history, is a point that I do not feel interested in contending or in offering any opinion upon. Suppose, my Lords, for instance, there were two deeds speaking of a subsidy,—one executed during the period of the French war, and the other during the reign of Queen Elizabeth. It would be competent for your Lordships to say that the word subsidy, in the reign of Queen Elizabeth, meant a completely different thing from what it does now, and whether you are to arrive at that from evidence, or from reading books, or history, is not a matter of importance, and therefore, when this was argued before the Vice-Chancellor, (for there was some discussion before his Honour whether the opinions of those learned persons could be gone into as evidence,) I confess I did not at that time feel the force of that objection. My attention has been called since yesterday to the short-hand writer's notes of what did pass, and I see very distinctly that that objection was pressed, and his Honour said that whether that was evidence or not, he should receive it. Whether, my Lords, you take the evidence which is given by the Relators upon the subject as strictly evidence, or whether they call your Lordships' attention to that which you might find yourselves by looking at books, does not appear to me very important. I am willing to take either view. Take it that the Relators have given the evidence of persons, conversant with the writings of those days, as to what was the meaning of the expression, "Godly Preachers;" or take it, if you please, that your Lordships are to find it out by reading books of that date; it seems to me to be immaterial. I take it that it is perfectly notorious that during the reign of Charles the Second, and all the period, I was going to say both before and after, but probably only before, or in some degree only after, the term "Godly Preachers" was used in a certain sense as a term of

reproach. It meant persons that were righteous over-much, persons who formerly came under the character of Puritans, and who after the Act of Uniformity———

Lord BROUGHAM.—The term of reproach was "Puritans:" they called themselves "Godly." It was a name they gave themselves. The Cavaliers called them "Puritans," but they called themselves "Godly."

Mr. SOLICITOR-GENERAL.—That may very likely be the solution of it.

Lord WYNFORD.—It is impossible that Lady Hewley could have used it as a term of reproach.

Mr. SOLICITOR-GENERAL.—Certainly, my Lord, I do not mean that she could have used it in this sense; but with those persons who used the term in ribaldry, it was meant as a term of reproach.

Lord BROUGHAM.—They themselves meant it as a term of reproach to the Church—that they themselves were godly preachers, and that the Church were not so.

Mr. SOLICITOR-GENERAL.—It is immaterial to me, my Lord, what was the origin of the term;—what I propose is this, and from that I cannot be driven, that the Nonconformist Ministers were called godly preachers as distinguished from preachers of the Church,—I say as distinguished from preachers of the Church; that perhaps is not a correct view of the matter, for the Church never spoke of themselves as preachers. "Preacher" was a term always designating the Nonconformist Minister. The clergy made more of the Liturgy and Services of the Church; and I do not think there will be found in the passages which have been handed up to me, and which have been looked out by persons infinitely more acquainted with the subject than I am, any in which the word "Preacher" has been applied to members of the Church. It was applied to the seceding parties—to the Nonconformist parties, but not to the Church. I entirely assent to the evidence given in this case by Dr. Bennett, which was read by my learned friend, that the term Godly Preachers meant Nonconformist Ministers. My Lord, your Lordships will find in p. 108 of the Appellants' Appendix, the answer of Dr. Bennett, one of the Relators' Ministers, an Independent Minister of great note. To the 17th interrogatory, Dr. Bennett says, "that the words or terms, Godly Persons and Godly Ministers or Godly Preachers, were adopted, used or employed in the conversations and writings and publications of the times in the last foregoing interrogatory mentioned,"—that is, the time of Lady Hewley or thereabouts,—"for the purpose of describing or designating Dissenters and Dissenting Ministers generally; that the said terms or words were used for the purpose of distinguishing Dissenting Ministers and Preachers from the Established Church; for Ministers of the Church of England would have regarded it as a slur to have been called Preachers at all, the Liturgy being with them considered more important than preaching,—while the Dissenting Ministers had no Liturgy, and considered the preaching of the Gospel as their most important duty; and the dissipation into which the nation ran after the Restoration, caused the Nonconformists to be branded with the term Godly by way of reproach." That is the evidence which is given on the part of the Respondents.

Now, my Lords, to that I entirely assent; and, assenting to that, I wish to call your Lordships' attention back again to the terms of the Trust. We have it established by evidence—evidence in conformity to what I think we must say we all, more or less, know to be the case—that the word Godly Preachers meant Dissenting Preachers; and I add, in order to make the thing more clear, Protestant Dissenting Preachers,—because, though Dr. Bennett does not use the term Protestant, it is quite clear that it was confined to Protestant Dissenters. Suppose the passage had the word Protestant,—so many poor Protestant Dissenting Preachers, for the time being, of

st's holy Gospel, and such poor and godly widows of Protestant Dis-
ng Preachers of Christ's holy Gospel,—your Lordships would have to
true this deed just as if you did not know who the individual was who
e it, but saw that she had given money upon trust for poor Protestant
enting Preachers of Christ's holy Gospel, for the time being. My
ls, what does that mean? Suppose there was nothing else to explain
hat is meant by Protestant Dissenting Preachers of Christ's holy
el? My Lords, I say, that means Protestant Dissenting Preachers—
ching Christ's holy Gospel in any mode tolerated by law for the time
g.

ord WYNFORD.—Unitarianism was not tolerated by law at that time.

r. SOLICITOR-GENERAL.—No, my Lord, I cannot have overlooked
circumstance that it was not; but what this money was given for was,
Protestant Dissenting Preachers, for the time being, of Christ's holy
el. Now, my Lords, the Respondents seek to engraft, as they think,
ecessary inference, upon this, preaching only certain doctrines, such as
tolerated at the time of the execution of the deed. I want to know
e they find that. Where do they find any thing which enables them to
in those words? My Lords, I contend that what is meant is this—tole-
l for the time being; capable, together with the law, either of extending
rrowing, as the case may require.

ow, my Lords, what were the doctrines that were tolerated at that
? The deed was executed in 1704; that was about sixteen years after
Act of Toleration. Now the Act of Toleration says, "That no person
enting from the Church of England, in holy orders, or pretended holy
rs, or pretending to holy orders, nor any preacher or teacher of any con-
ation of Dissenting Protestants, that shall make and subscribe the de-
ation aforesaid,"—that is, the declaration of allegiance, that we have
ing to do with,—"and take the oaths of the general or quarter ses-
, and shall also declare his approbation of and subscribe the Articles of
gion mentioned in the statute made in the thirteenth year of the reign
ueen Elizabeth, except the 34th, 35th and 36th, and certain words in
0th Article, should be liable to any penalties." There is then another
e, "That neither this Act, nor any clause contained, shall extend, or
onstrued to extend, to give any ease, benefit or advantage, to any Papist
opish recusant whatsoever; or to any person that shall deny, in his
ching or writing, the doctrine of the blessed Trinity, as it is declared in
aforesaid Articles of Religion." Your Lordships observe, therefore, that
e time of the execution of this deed it was lawful for every person sub-
ing, and which of course must mean (I am sure your Lordships will
felt the force of what was stated by the Attorney-General upon that
ect) subscribing under circumstances that must lead to the reasonable
ence, that you subscribe fairly and mean to express your real opinion,—
cribing to 36 out of the 39 Articles of Religion, and not denying the
rine of the Trinity, those persons were tolerated and might preach Pro-
nt Dissenting doctrines. With regard to the Trinity, there was not
an exception in the Act of Toleration, but there had been, previously
e execution by Lady Hewley of this deed, another Act, namely, the
nd 10th of William the Third, cap. 32, which is intituled, "An Act for
nore effectual suppression of Blasphemy and Profaneness," and it im-
s severe penalties upon any person teaching or preaching against the
Trinity. Therefore at that time it was lawful to preach any thing,
these restrictions—You must subscribe, which means assent to, the
cles of Religion, except the three which relate to church government;
you must also not preach against the Trinity. This is the enactment:
any person shall, by writing or teaching, deny any one of the Persons
e Holy Trinity to be God, or shall assert or maintain there are more

Gods than one, or shall deny the Christian Religion to be true, or the Holy Scriptures—," and so on, "he shall be liable to be imprisoned for three years," and to certain other penalties.

Now, that being the state of the law, the question is, how your Lordships would construe this deed, which declares a trust in favour of Protestant Dissenting Preachers, for the time being, of Christ holy Gospel. My Lords, there can be no doubt that when Lady Hewley executed that deed, or immediately afterwards, it would be said, and properly said, that there was no trust there for the benefit of a person who impugned the Trinity. It might be difficult to say that there would be no trust for a poor person who did not believe the Trinity, because that is not part of the statute; but there certainly would be no trust in favour of a person preaching against the Trinity; there would be no trust in favour of a person who did not subscribe the Thirty-six Articles; that is equally clear; because to preach Dissenting doctrines, not having subscribed the Thirty-six Articles, was legally penal.

My Lords, so the matter remained until the Act of the year 1779; and in that year a Statute was passed, the 19th of George the Third, chapter 44; and that Act, after reciting the former Act, recites that,—"Whereas many persons scrupled to declare their approbation of and to subscribe the said Articles; for giving ease to such scrupulous persons, be it enacted, that every person dissenting from the Church of England, in holy orders, or pretending to holy orders, being a preacher or teacher of any congregation of Dissenting Protestants, who, if he scruple to subscribe as aforesaid, shall take the oaths required by the Act in the first year of William and Mary, to be taken, made and subscribed by Protestant Dissenting Ministers, and shall also make and subscribe a declaration in the words following, viz., I, A. B., do solemnly declare, in the presence of Almighty God, that I am a Christian and Protestant, and, as such, that I believe that the Scriptures of the Old and New Testament, as commonly received among Protestant churches, do contain the revealed will of God; and that I do receive the same as the rule of my doctrine and practice." And then subscribing that, they are exonerated from the necessity of subscribing the Thirty-six Articles. That Statute passed in 1779: what, then, my Lords, was the state of the law in 1780? That they were then fit objects of Lady Hewley's charity. Can you say, then, that because at the time Lady Hewley executed the deed, a person that did not subscribe the Thirty-six Articles was not within the meaning of the term "Protestant Dissenting Preachers of Christ's holy Gospel,"—because he was not a preacher of that which was tolerated then, that when that was rendered unnecessary he was not a fit object? I am sure that cannot be contended; I have never heard that argued. If that, indeed, be the law now, there is no fit object of Lady Hewley's charity, for there is not a Dissenting Protestant Preacher in the kingdom who subscribes the Thirty-six Articles: it is never done. In that case, you must execute this charity *cy pris;* and in that case, I quite assent to what has been suggested out of this House, and I do not know whether it was not alluded to by one of your Lordships in it, that the Church has much the fairest claim,—they do subscribe.

Lord BROUGHAM.—I threw that out for the consideration of the parties twice in the course of the argument; and at another time, when they refused to take my Judgment, I suggested that they had better take care that the Attorney-General's hand did not come in upon them. I remember stating, that I know that is the opinion of a number of learned divines upon the subject.

Mr. SOLICITOR-GENERAL.—Your Lordship understands that the Attorney-General appears for the parties who have executed this trust; and if we satisfy your Lordships that we have done our duty, it will be for you

to say whether the money is to go to those whom we suppose it to go to, or whether it is to go to the Church; that we leave with your Lordships; but if it is to be contended that the subscription of the Articles which it was necessary that the parties should subscribe in the time of Lady Hewley, is now a necessary condition, preceding the reception of the charity, then I must fairly own that it appears to me that the Church has a much fairer claim than any of the Relators, or that sect in which they are placed; but I certainly must assume, or reason as if your Lordships were of opinion, that after the Act of 1779, the recipients of Lady Hewley's charity were not confined to parties subscribing those Thirty-six Articles. I believe that to be the law, and I shall so assume.

But if that be the law, then let me call your Lordships' attention to what the effect of the Statute of 1813 is. At the time of Lady Hewley there were two exceptions to the generality of the expression: the expression would embrace Protestant Dissenting Preachers for the time being, but that would not include persons who did not subscribe the Thirty-six Articles,—it would not include persons not preaching the Trinity; and the reason it would not extend to them is, that, although the words are sufficiently general to comprise them, it cannot be inferred that Lady Hewley meant to create a trust in favour of parties who could only become entitled by violating the law. But when the Statute of 1779 passed, it ceased to be a violation of the law to preach without subscribing the Thirty-six Articles; therefore the parties otherwise qualified might be entitled to the benefit of the trust, although they did not subscribe the Thirty-six Articles. I think that is fair and legitimate reasoning. But, thinking it fair and legitimate reasoning, it appears to me to follow as a necessary consequence, when the other branch of the restrictions was removed by a subsequent Statute, that then also parties, though they preached that which was not tolerated under the Toleration Act, and was forbidden under the Act of 9th and 10th of William the Third, ceased to be prohibited from so preaching, and consequently came within that general category described in the deed of Lady Hewley.

Now, my Lords, let me call your Lordships' attention to the precise terms of this Statute of 1813; for it is very important indeed that your Lordships bear in mind that the Act of Toleration contained the two exceptions; that the one having been removed by the Act of 1779, the Act of 1813, which removed the other, begins by reciting the Act of 1779. This Act is in the 53rd of George the Third, chapter 160. It appears to have received the Royal assent on the 21st of July, 1813, and is entitled, "An Act to relieve Persons who impugn the Doctrine of the Holy Trinity from certain Penalties:" and it begins, "Whereas in the 19th year of his present Majesty, an Act was passed, entitled, An Act for the further Relief of Protestant Dissenting Ministers and Schoolmasters, and it is expedient to enact as hereinafter provided, be it enacted that so much of an Act of King William the Third, entitled, An Act for the more effectual suppressing Blasphemy and Profaneness, so far as the same relate to Persons denying, as therein mentioned, respecting the Holy Trinity, be, and the same are hereby repealed." And then, also, the former Act, the Blasphemy Act as it is called, which imposed penalties upon persons denying the Trinity, is repealed now. I am sure that your Lordships cannot look at that Statute without seeing that it was meant to be supplemental to the Act of 1779. It recites the Act of 1779; there is not an allusion to the Act of 1779 throughout, except in this way, that whereas the Toleration Act had fallen short of absolute toleration in two particulars, namely, that it required subscription to certain Articles, which prevented persons from denying the Trinity, and whereas an Act had been passed removing that restriction on one of the points, now therefore it is expedient to enact as hereinafter enacted; and then the other restriction is also removed. What was the meaning of this, but to put the

law just in the position in which it would have been, if no such restrictions had ever been introduced into the Toleration Act? And, my Lords, I have put the question, whether a Dissenting Preacher, preaching in the mode permitted by the Toleration Act, and not liable to any of those penalties, is not a Protestant Dissenting Preacher for the time being? He certainly is tolerated by law; he certainly is a preacher; and he is preaching that which is tolerated under those different Statutes. And the first mode in which it is attempted to exclude him, is this, that although he is now a Protestant Dissenting Preacher, practising that which is lawful, yet what he is preaching was at the time of the creation of the trust unlawful, and therefore he must be considered as a party not coming within the provisions of the deed.

Now, my Lords, I have already stated that my proposition is, that whatever from time to time is lawful, is within the operation of this trust.

My Lords, when this case was argued before, the ingenuity of counsel was taxed in a variety of ways to suggest analogous cases; actual precedents it was, from the nature of things, impossible to produce, but a variety of analogous cases did suggest themselves. On the one hand, it was contended that where a trust is created for the benefit of parties, under a general description, and that general description does not embrace a particular class, by reason of some existing law rendering that class unlawful at the time,—on the one hand, I say, it was contended that that class is for ever excluded; on the other hand, it was contended that the exclusion ceases with the law. Now, my Lords, this case was suggested: Suppose a charity was created, whereby a party was to grant certain land to be cultivated by poor persons gratuitously, and suppose next year it should be rendered lawful to cultivate tobacco in this country, which is unlawful now;—after the repeal of the laws restricting the cultivation of tobacco, would it be a due execution of this trust to let the land be used by persons for the cultivation of tobacco? Certainly it would. But the author of the trust would not have so meant. He meant that that which was to be done was to be legal; but if the author of the trust has not in terms excluded the cultivation of tobacco, it must be inferred that the only reason why the cultivation of tobacco was excluded, was because the law said it is not lawful, and when the law ceases to say that, it will become lawful.

In the same way, this case was put: Suppose a party was to establish a market to be used gratuitously or upon easy terms, by parties coming to use it as a market: suppose such a market had been established in the year 1830, and parties were to come now and sell game there,—was that within the trust? It certainly was not what was meant; it was never meant to create a trust for the benefit of parties to sell game there. No; but the answer is, You have not excluded persons from selling game; you have used expressions constituting this a market, at the time it was not lawful to sell game; but when it becomes lawful, the selling of game in the market becomes as lawful as the selling of any other article within it.

Now, my Lords, I apply that to this case. At the time of Lady Hewley, it was not lawful to preach Unitarian doctrines. She creates a trust in favour of persons who shall preach what I must interpret to mean tolerated Protestant Dissenting doctrine: but Unitarianism is not tolerated Protestant Dissenting doctrine; therefore there is no trust enabling parties to preach Unitarianism. Subsequently, it becomes lawful; then the generality of the words lets in all those who preach whatever is, for the time being, the tolerated doctrine that may be preached.

My Lords, there was amongst the ferocious penal statutes that were passed in the reign of Charles the Second, the 17th of Charles the Second, chapter 2; one intituled "An Act for restraining Nonconformists from inhabiting Corporations:" and it was enacted that the parsons, vicars, curates and

other persons in holy orders, or pretended holy orders,—that is, the ejected ministers,—should not be allowed to inhabit corporate towns or within five miles of corporate towns. Suppose, after the passing of that Act, and while it was in operation, somebody had created a trust for the benefit of the inhabitants of a particular town; what I state hypothetically is what has no doubt occurred in particular instances; was that a trust created for Dissenting Ministers in those corporate towns? Clearly not. Other parties might participate in the benefit of this trust, but Protestant Dissenting Ministers could not; they could not, therefore, bring themselves within the class that were to claim the benefit of that trust. Are your Lordships prepared to say now, that any individuals having to execute a trust of that sort, must inquire whether any of the recipients are Dissenting Preachers or not? Your Lordships see that those questions ramify to a most alarming extent. I do not know to what inquiries they may not lead, because every trust that was created in remote times, before it could be safely executed by a trustee, must give rise to all that sort of inquiries, What was the law at that time? What was the law as to the state of religion?—as to a variety of other states: will the parties who are now claiming the benefit of this trust, be able to bring themselves into such a position as to shew that according to the law, not as it now exists, but as it then at some undefined time existed, they would be fairly within the meaning of that clause? My Lords, I have given two or three illustrations; I will not weary your Lordships by going over more, but it will be very obvious that a great many others might be suggested.

My Lords, when this argument was pressed in the different arguments that took place upon this subject below, although in the first instance the state of the law was relied on as governing or materially influencing the question, all the counsel who argued it gradually receded from that line of argument, and in truth what they came to was this,—not that the state of the law was to regulate it, but the supposed state of feeling and opinion of the Foundress, as evidenced in part or in whole by what the state of the law was; and applying to this case, it was contended or suggested, it may be, that the law does not prevent the parties from benefiting in this trust, but the state of the law is pregnant evidence of what the opinions of the Foundress were. My Lords, I apprehend that to be totally inadmissible, and to such an extent, that if your Lordships could find by irrefragable evidence what was the opinion of the particular individual founding the charity, you cannot avail yourself of such knowledge: you cannot by that knowledge regulate the mode of distributing the trust;—that you must do, according to the ordinary principles, from what you find in the deed. And in truth, my Lords, to adopt such a course, is to do that which every lawyer knows cannot be done; it is an attempt to find out by extrinsic inquiry, not what the author of the deed has said, but what you suppose the author of the deed meant to say. You may look at extrinsic circumstances to interpret what a party has said;—you can never look at extrinsic circumstances to interpret what she meant to say. If you take that course, you are acting, not upon what you find here, but upon what you suppose was meant to be found here. If it is contended that the party has not said that which he really intended to say, the answer always is, if that was the meaning of the party, "Quod voluit non dixit."

My Lords, to what a prodigious difficulty will this lead, if that opinion of the founder of an instrument is to afford you any guide as to the mode in which you are to interpret what you find within the four corners of the deed! Suppose this day two deeds to be executed, founding a charity *ipsissimis verbis* such as are found here; or I must not put it as I was going to finish my sentence, because one of the parties I was going to allude to is no more; but suppose, ten or twelve years ago, two deeds were executed on

the same day *ipsissimis verbis* with Lady Hewley's deed, with this exception, that in one, the founder should have been Mr. Belsham, and in the other, the late Mr. Simeon. I put it to your Lordships with the utmost confidence, whether there is any principle of law that would enable the Lord-Chancellor, in directing the mode in which those trusts should be executed, to direct that the one should be executed in favour of one class of persons, with reference to Mr. Belsham's deed, and the other in favour of another class of persons, with reference to Mr. Simeon's deed.

Mr. KNIGHT BRUCE.—Clearly it would.

Mr. SOLICITOR-GENERAL.—Clearly it would! I should be very glad to hear it explained; I am quite surprised at that interruption.

Mr. KNIGHT BRUCE.—I beg your pardon, I did not mean to interrupt you.

Mr. SOLICITOR-GENERAL.—I do not complain of it, but I never heard that suggested by any one. I shall be corrected by your Lordships if I am wrong.

Lord WYNFORD.—Will you state what are the words in your supposed deeds?

Mr. SOLICITOR-GENERAL.—I say the same words as in Lady Hewley's deed. Perhaps the expression "godly preachers" would not now be consistent with usage. I will say Dissenting preachers,—"godly preachers" is not an usual expression in modern times; but I am perfectly willing to adhere to my proposition; let it be done in the same words as are used in Lady Hewley's deed. Dr. Bennett has explained that "godly preachers" mean Dissenting preachers, and therefore I was proposing to alter those words to words more conformable with modern usage; but I am willing to take either the words of Lady Hewley's deed, or the words "Dissenting Protestant preachers."

Lord WYNFORD.—Take the other words, "preaching Christ's holy Gospel."

Mr. SOLICITOR-GENERAL.—Dissenting would not do very well for Mr. Simeon, and therefore I will alter it to some strong Trinitarian Dissenting minister; suppose Dr. Bennett had founded a deed, and Mr. Belsham also had founded a deed, on the same day, in the same words, for the benefit of Dissenting preachers of Christ's holy Gospel; I want to know if the next day the Lord-Chancellor had been called upon to execute that, whether he could say, Inquire what Mr. Belsham's opinions and what Dr. Bennett's opinions were, and give it under the one deed to one class of persons, and under the other to another class of persons. Till I hear that explained, I shall assume that could not have been done.

Lord WYNFORD.—Are the words intelligible without some inquiry of that sort?

Mr. SOLICITOR-GENERAL.—Of course the words would be perfectly intelligible. I say that the moment a Court of Justice suffers itself to be let into any theological inquiries, the words are unintelligible; but if it confine itself to that which I take leave to say is the only province of Courts of Justice, to look at what is lawful and what is unlawful, the words are perfectly intelligible. My Lords, I boldly say this, and I assure your Lordships I should be quite ashamed of thinking and speaking any thing that might be irreverent upon such a subject,—Courts of Justice know but two religions, the religion of the State and tolerated Dissent; and the moment you enter into the inquiry what is the greater or less quantum of error on the part of those who are not that which the State recognizes as the right party, you open a sea of interminable difficulties, to which I am quite sure no one now alive can see an end.

If you may do this in respect of tolerated Dissent, may you do it within the pale of the Church? Suppose Mr. Simeon had founded a deed for pious and godly preachers of the Established Church, and the late Dr. Marsh

had founded another, would your Lordships inquire whether the same class of persons was intended,—would your Lordships permit so indecent an inquiry as that,—both being preachers of not only what was tolerated, but what is recognized by the State as the right faith? Would your Lordships permit an inquiry whether there were not shades of difference in opinion, and that Mr. Simeon probably contemplated the benefit to go to one class, whereas Dr. Marsh contemplated the benefit to go to another? If you may open this sort of inquiries without the pale of the Church, I do not see why you may not open them within. Courts of Justice are not fit tribunals for any inquiries of this sort. We know when a person is a member of the Church, he subscribes the Articles, or communicates with the Church, or there may be tests of that sort; that is what is meant by being a member of the Church. If he is not a member of the Church, we are bound to say, speaking in Courts of Justice, he is in error. Is he in tolerated error, or is he not? If he is in tolerated error, no Court of Justice can inquire further.

Bishop of LONDON.—Mr. Solicitor-General, will you just consider this case: suppose the preacher did not preach the Gospel at all.

Mr. SOLICITOR-GENERAL.—He will not be within the terms of the deed.

Bishop of LONDON.—Who is to determine that?

Mr. SOLICITOR-GENERAL.—I am obliged to the Right Reverend Prelate for suggesting that:—the Court must find that out as well as it can. There are infinite difficulties in carrying into execution these deeds, and so there was (to compare very different subjects) in carrying out the trusts with respect to the Opera-House case and the Theatres; but Lord Eldon did not say, I will not execute this trust, but, I must find my way as well as I can.

My Lords, I have endeavoured to make certain illustrations in a former part of my argument. Now with reference to opinions, give me leave to suggest this: I do not know who was the great antagonist of Dr. Jenner at the time that he introduced vaccination; but I have no doubt that there was some antagonist, and I will say, for the sake of argument, Mr. Smith; —that he thought it a very dangerous thing for her Majesty's subjects. Suppose Dr. Jenner had founded a hospital for the relief of sick persons, or for the cure and prevention of disease, and that the great rival, whoever he was, had founded another,—could you say that that was to be construed differently with regard to one deed and the other? The differences of opinion as to what is the best mode of dealing with the human frame, may be of infinitely less importance than the different sorts of belief that are to be taught; but the difficulties are all difficulties *ejusdem generis*. I say, in neither one case nor the other, could you look to more than this,—to see that the general words which the parties have chosen to use are complied with. You would have no right to say that Dr. Jenner thought this or that a proper mode of administering the trust.

My Lord, there is a number of very odd consequences which would follow from a contrary decision. Suppose the case I put of Mr. Belsham having founded a charity for Dissenters, "godly preachers of Christ's holy Gospel," saying nothing at all about Unitarians: I collect from my learned friend that it would be competent to the Court to inquire what were Mr. Belsham's sentiments, and to confine the charity to those persons. Suppose, my Lord, that in the progress of religion and knowledge, the class of persons that believe in Unitarianism shall become wholly extinct; plenty of Dissenting godly preachers of Christ's holy Gospel might remain; plenty of persons who would come within the terms of Mr. Belsham's trust; but because they do not believe and persist in error, are they to be excluded from the benefit of the trust? My Lords, they must, upon the doctrine which is contended for; that is a difficulty which parties might perhaps create for themselves.

If, for instance, a person chose to create a trust for the benefit of those only who maintain Unitarian heresies, then, if there were no such persons, the trust might fail; but it is a novelty to say that if a party creates a trust in which he studiously avoids designating the particular error and the condition and the recipient, that you shall impose that as a condition, though he has not said so, and that such a course may actually render the Court and this House ultimately a means of creating a sort of premium for continuing in error.

My Lords, the 39th Article of the Church of England declares it to be lawful to take an oath. Lady Hewley's charity was made for those persons only who subscribed, which means assented to, that proposition among others. If I ask the question, whether Quakers and Moravians are fit objects of Lady Hewley's charity?—probably the answer will be, No. That will be grappled with at once; but there is a variety of parties—I am sure your Lordships in your legislative capacity must often have proof of that—who do not come under the sect of Quakers or Moravians, who entertain, at least represent themselves as entertaining, conscientious scruples against taking an oath at all. Is that question to be put to the proof?

Lord WYNFORD.—Those scruples have grown up very much of late years, at least some of them.

Mr. SOLICITOR-GENERAL.—It may be, my Lord, much to be lamented that such scruples exist; it may be said that it is mere fancy or imagination; but I wish to know whether Protestant preachers entertaining Trinitarian opinions, and in all respects conformable to Lady Hewley, except that they do not think it proper to take an oath, are fit objects of her charity? Those who say that Unitarians are not fit objects, must, if they carry out their principles, say those who deny the lawfulness of an oath are not fit objects: the objection is the same in kind, though not in importance.

These are not all; let us look at two other of the Articles. The parties, my Lords, claiming this are the Independents. Do they believe this, "That person which by open denunciation of the Church, is rightly cut off from the unity of the Church and excommunicated, ought to be taken of the whole multitude of the faithful as an heathen and publican, until he be openly reconciled by penance and received into the Church by a judge that hath authority thereunto"? Is that necessary to be believed by parties, recipients of this charity? At the time that Lady Hewley lived, it was; no one could be a preacher of Christ's holy Gospel that did not believe that.

"The King's Majesty hath the chief power in this realm of England and other his dominions, unto whom the chief government of all estates of this realm, whether they be ecclesiastical or civil, in all causes doth appertain." "The laws of the realm may punish Christian men with death for heinous and grievous offences; it is lawful for Christian men at the commandment of the magistrate to wear weapons and serve in the wars." Is every body excluded that does not agree to all that; that does not believe the king to be the head of the ecclesiastical as well as the civil state? Certainly not, because all this has been repealed since. So it has; but if this has been repealed since, so has the other restriction about preaching against the Trinity.

My Lords, so the matter, as I submit to your Lordships, must have stood, if it had rested upon the original deed; only in the course of the argument and the discussion yesterday, it once or twice appeared to me, if I may say so respectfully, from questions that were put by your Lordships, that your Lordships had supposed that there was something in the first deed that had reference to Bowles's Catechism, or some test of faith. There is nothing of the sort. The first deed, which was executed in 1704, has no reference whatever to any religious opinions, except so far as religious opinions are to be gathered from the expression, "godly preachers of Christ's holy Gospel;" and so far as they may be collected from the state of the times and the age in which that deed was executed.

The next deed is that to which I will now take the liberty of adverting. It is the deed of 1707. My Lords, unquestionably it is a very well-known principle of law, that where two deeds are executed at the same time, or so as to form part of one transaction, it is not any deviation from the principle of law which compels you to find the meaning of the deed from within its own four corners, that you may look at the concurrent deed to explain the other; and if, therefore, this deed of 1707 was any part of the same transaction as the deed of 1704, you might perhaps have looked at it to explain it. My Lords, I will be perfectly candid; if it be lawful in the construction of these deeds to inquire by matter extrinsic what the religious opinions of Lady Hewley were, you may of course look at the deed of 1707 as a test of what her opinions were at that time, and the presumption will be irresistible that they were the same in 1704; but that does not at all lead to the proposition that you can find what her meaning was in the deed of 1704, unless you first establish that it must have been her meaning to establish a trust only in conformity with what were her own opinions. Now then, how do we find out what were her opinions in 1707? On that a mistake has often existed when this question has been argued. That deed is made between the same parties as the former deed; it does not in any one instance allude to that former deed; but it conveys to the same Trustees property, and amongst other the almshouse in York, and which she directs shall be used by them as a hospital or almshouse for poor people,—that they were to provide Catechisms and give £60 among ten poor women, that is, £6 a year apiece, upon the first day of every almanac month. Then, there is the same mode of appointing new Trustees; and then she says, that "all Trustees, and all such as shall be elected Trustees, shall, at all times after the death of Lady Hewley, observe the rules, orders, directions and trusts, contained in the said collection, and signed with her proper hand;" and then it says, the Trustees are to be the visitors of the hospital; and then, having so provided for the hospital, the surplus was to go,—she does not say, in the same way as directed in the former deed,—but she declares the trusts of it, which are the same as the trusts of the former deed, that is, godly preachers and so forth. That deed bears date in 1707. In 1709, there is an indorsement upon it by Lady Hewley: she reserved to herself the power of making an indorsement, and this is the indorsement,—"It is the will and pleasure of the within-named Dame Sarah Hewley, that the management of the said hospital, as to the putting in the poor, upon any vacancy, shall be in the power of the within-named Thomas Colton," (he seems to have been her great friend, and he was one of those who were her Grand Trustees, as she called them,) "and also of Timothy Hodgson, Gentleman; Matthew Bayock, Gentleman; Mr. Samuel Smith, Grocer; Mr. Robert Rhodes, Upholsterer; Martin Hotham, Mercer; and William Hotham, Mercer; all of the city of York; and such as shall be chosen to succeed any of them when they die. And that the Grand Trustees shall every year, at the beginning of it, leave the monies in their hands for paying the monthly allowance for the year ensuing, and pay what is necessary for repairs and rebuilding it (when need requires it) into the said Trustees' and successors' hands; and their receipt shall be their discharge. In testimony whereof I set my hand, the 10th day of May, 1709."

Therefore, my Lords, you have here a deed by which there is a provision to be made for a hospital, and £60 a year to be given for the maintenance of the almswomen, besides keeping it in repair and providing among other things Catechisms; and the surplus of the fund is to be distributed nearly in the same mode, I believe in exactly the same mode, as the former deed. Then there is an indorsement upon it, that she wishes six persons, whom she names, tradesmen in York, the greatest bulk of them, together with Mr. Colton, to be Trustees to put poor people into the hospital, who are to receive every year £60; and those Trustees are to distribute that to them.

Then there are the rules for the government of the hospital, which are divided into two heads; first, "Rules and Orders to be observed by the Trustees;" and secondly, "Rules and Orders to be observed about the Qualifications of the Poor People to be elected into the Almshouse, from time to time;" and among others there is this,—"Let every alms-body be one that can repeat by heart the Lord's Prayer, the Creed and Ten Commandments, and Mr. Edward Bowles's Catechism. Let all the alms-people, when not disabled by weakness, duly repair to some religious assembly of the Protestant religion, every Lord's-day, forenoon and afternoon; and at other opportunities to attend the ordinances of God." Then a number of other regulations: "Let every alms-body, morning and evening, in private devotion commend themselves to God in prayer, and in their prayer remember their Founder, Sarah Lady Hewley, while she lives, and after her death, pray for her Trustees."

Now, my Lords, that is the second deed; and the supposed materiality of that deed is this—it is said, whatever doubt there might be about Lady Hewley's opinions, or what she probably would have wished if it had stood upon the former deed, no such doubt can exist upon this deed, because she directs the alms-bodies to be those that can repeat, amongst other things, the Creed and Bowles's Catechism,—the Creed meaning the Apostles' Creed, I presume, the Creed in ordinary use. Now, my Lords, in the first place, you are to observe that there is nothing said as to any such test to be applied to the godly preachers—there is nothing said about the Creed or Mr. Bowles's Catechism as to anybody but the almswomen. Was that an intentional or an accidental deviation? Those deeds were prepared with the most elaborate care; that is in evidence; it is their own statement. The greatest care and attention had been devoted to the preparation of those deeds; and you see, not once, but a second time, in declaring the trust for the benefit of preachers, she confines it to that general expression, "Godly preachers of Christ's holy Gospel;" and that at a time when the necessity for a Creed, in some circumstances at least, was present to her mind, because she provides for the Creed as to the almswomen.

My Lords, that might very reasonably have been meant as the distinction; she might very reasonably have thought that for poor old women assembled together to pass their lives under the same roof, it was important to have some common test binding them together, which was not at all important with regard to the ever-varying and fluctuating body who were to be the recipients of her Grand Charity, as she called it. That she had no sectarian feeling about it is quite obvious, for she does not require them to go to her own chapel. She had founded a chapel at which Dr. Colton was preaching; she does not require them to go there, but to any place of Protestant worship, which would be clearly fulfilled by their attending the church; and, accordingly, we find that Mr. Wellbeloved says the doctrines of Unitarianism have not been introduced into the almshouse, according to the best of his belief; only two or three attend the chapel at St. Saviour-Gate; and the others, who are not too infirm to go any where, attend the parish church; therefore Lady Hewley, although she does in this deed introduce the necessity for a creed, for a certain part of her charity, does not enforce it in a rigid manner; for she leaves it in the most open manner, and directs them to go only to some place of religious worship.

Now, my Lords, let us see what are the creeds which she has required,—the Apostles' Creed and Mr. Edward Bowles's Catechism. First of all, the Apostles' Creed. Your Lordships are aware (I will presently refer you to some extracts from ancient writings which will shew the truth of what I am stating) that in former times, for a party to say that the Apostles' Creed was the test of his belief, was thought next to stating that he was very far indeed from being orthodox; for it is said, any Socinian will do that; and does a Unitarian do it? My Lords, I hold in my hand a Unitarian Prayer-

Book. It is true that Unitarians have altered the Apostles' Creed in a very minute particular,—not at all with reference to the Trinity or the Atonement or Original Sin. But the Unitarians and Dr. Clarke, I think, thought that expression, "he descended into hell," was an incorrect translation, and they omit that. But can we imagine that that is what Lady Hewley meant the alms-bodies should believe? Very learned men have doubted whether it is not an incorrect translation, and that it should be, "he descended into death" [*the grave*].

Lord WYNFORD.—Or an interpolation.

Mr. SOLICITOR-GENERAL.—"He descended into hell," that is left out; and the last paragraph, "I believe in the Holy Ghost, the holy Catholic Church, the communion of saints, the forgiveness of sins," in the Unitarian Prayer-Book is, "I believe in the Holy Spirit:" they leave out "the holy Catholic Church," which, whether it is right or not, is hardly a matter of belief. "I believe in the holy Catholic Church,"—the meaning would probably be that the Church of Christ is the right Church; it is no difference in belief at all; it is, if I may say so, a matter of taste whether you have that expression in or not: "the holy Catholic Church, the communion of saints,"—they leave out that. Now your Lordships are of course aware that the questions with respect to those parts of the Creed which are rejected by the Unitarians, are questions that have been controverted in the Church without the smallest suspicion on the part of those who were raising the questions, that they were doing any thing more than entering into legitimate discussion upon subjects of great importance, but which were fair subjects of inquiry. In Bishop Pearson's Exposition of the Creed, with Notes by Dr. Kennett, under Article 5, "He descended into hell," there is this note: "The Church of Aquileia, as we learn from Ruffinus, being the first which inserted these words into the Creed, somewhat less than 400 years after Christ, omitted those of the burial, and therefore intended no other sense than what the Roman and Eastern forms expressed by the word 'buried,' as the same author declares." But, my Lords, I purposely avoid going into any thing like a religious disquisition, which is very unfitted for this place, except to shew that that passage in the Creed is quite immaterial, which many of the most pious divines may think perfectly right and others think to be wrong, and for all practical purposes it seems immaterial. As to supposing that Lady Hewley intended the alms-bodies, as she calls them, to go into that, it is utterly impossible. But then it is said, whatever you may or may not deduce from the Creed and from Bowles's Catechism, you can at least deduce that she was a strong Trinitarian. And one of the gentlemen who have been examined by the Respondents, says that the whole Creed is what he calls "racy with Trinitarianism." I do not know exactly the meaning of that expression, but I suppose, full of it, the Trinitarianism is easily to be discovered. I did not mean to find fault with the expression. I dare say it comes from a gentleman well skilled in this subject; I have heard of racy wine; but it means, somehow or other, that it is full of Trinitarianism. Now, my Lords, let us see how far that is borne out. Your Lordships will have the goodness to bear in mind for what purpose it is that Bowles's Catechism is so much relied upon: it is to shew that Lady Hewley not only believed in the doctrine of the Trinity, but considered it a most essential point, and therefore must be by implication supposed to have intended to confine her charity to persons of the same belief, though she has said nothing on the subject.

First of all, who was Mr. Bowles? Your Lordships will have observed the expression—which is somewhat unusual, not in the deed, for Bowles's Catechism is nowhere alluded to in the deed, but it is in the Regulations left for the almswomen—"That every alms-body be one that can repeat by heart the Lord's Prayer, the Creed and Ten Commandments, and Mr. Edward Bowles's Catechism;" not Bowles's Catechism, but Mr. Edward

Bowles's Catechism; the fact being, as it appears now as a matter of history, that Mr. Edward Bowles had been a minister living at York and was a friend of Lady Hewley.

He is mentioned in Calamy's Life of Baxter, Vol. II. p. 779. This is an account of what he calls the Ejected or Silenced Ministers. There were nearly two thousand of them who, for conscience' sake, threw up their livings upon the passing of the Act of Uniformity, in the year 1662. The account given in the Life of Baxter is this: "Mr. Edward Bowles, M. A., was son of Mr. Oliver Bowles, of Sutton, in Bedfordshire, who was a useful member of the Assembly of Divines, and author of the excellent book called Pastor Evangelicus,—published by this son of his and dedicated to the Earl of Manchester,—a book not suffered to creep out in the time of rampant episcopacy, not for any evil in it, but because some men do not care to be put upon too much work." Then he says, "He was indeed a great man, an excellent scholar;" and he says more about him: "Besides, he did not spend his time about mint and cummin, &c., but the weightier things of the Law and Gospel, which have the greatest relish with sober minds. It was ordinarily (but falsely) laid to the charge of the ministers of those times, that, instead of the plain Gospel, they still sang Canticum Novum to the tune of the times, to the keeping open breaches, &c. But it may be appealed to any of the hearers of Mr. Bowles yet alive, and, more than that, to the several volumes of Sermons that have been written from his mouth, and are yet preserved as a treasure in York and usually read in families, whether he ever used any such manner of preaching. No, repentance and faith in Christ, and the other invariable truths of Christianity, were his constant themes. And his prayers were as much of a piece as his sermons. For there were four things he mostly prayed for, viz., that there might be sound doctrine, purity in worship, true Christian liberty and the power of godliness;" and then he says, "Mr. Bowles kept a lecture every Thursday, in the morning, at St. Peter's in York, and in that lecture went through the whole Epistle to the Romans: he preached his course at the Minster," and so on. "He was always the mouth of the rest when the country and city ministers had their quarterly meetings. His death was as generally lamented by pious and well-disposed persons as any one man's would have been in the land. For, besides his great worth and eminent abilities, he was in the flower of his age, not exceeding forty-five. He was buried on the eve of Bartholomew Day, 1662; so that his mouth was opened above, just at the time when they were stopping it here below." There is a note, "He hath not much extant—besides what is before-mentioned, I know of nothing of his but two excellent sermons,—one at Paul's, before the Lord Mayor of London, and another, concerning the duty and danger of Swearing, at York, 1655; and a plain and short Catechism (without his name)." Therefore it appears that he was one of those parties who lived in York, and published what is called by Dr. Calamy in his Life of him, "a plain and short Catechism."

Now how is that "plain and short Catechism" here relied upon as proof that, because Lady Hewley selected that Catechism, she was strongly imbued with Trinitarian doctrine?

My Lords, what was the ordinary Catechism in use at the time amongst Nonconformists? Not Bowles's Catechism; indeed, Bowles's Catechism is now a thing impossible to get. What was in use was the Catechism of the Assembly of Divines. Now, my Lords, it is extremely important that your Lordships should bear this in mind, that if she had used the ordinary Catechism, the Catechism that obviously presented itself to the mind of a Nonconformist, the question would have been beyond all doubt as to her believing in the Trinity and requiring that belief. The Shorter Catechism of the Assembly leaves no manner of doubt upon the subject. Of all the Catechisms extant, I believe it is that which puts the matter in the clearest

most indisputable light. But Lady Hewley steps out of her way to t that Catechism, at least not to adopt it, and to take another, which Lordships will see contains not a hint of the doctrine of the Trinity, the beginning to the end,—not an allusion to it. The Catechism of the mbly, as has been already called to your Lordships' attention by my ed friend, contains this as the sixth question, "How many persons are in the Godhead? There are three persons in the Godhead, the Father Son and the Holy Ghost, and these three are one God, the same in tance, equal in power and in glory." It is utterly impossible that Lady ley should not have been perfectly aware of this, she being a very ious person, and this being the Catechism always adopted by persons r class; she must have known that the doctrine of the Trinity was propounded.

y Lords, was Original Sin there propounded? The fourteenth question s,—"What is sin? Sin is any want of conformity unto or transgression e law of God." You have, therefore, in the Shorter Catechism of the mbly, the doctrine of the Trinity and the doctrine of Original Sin pro- ded in the strongest terms. Your Lordships will not have failed to rt to the particular expression there; not that sin is simply a trans- ion of the law of God, but "any want of conformity unto or transgres- of the law of God." Nothing could more strongly illustrate the doctrine riginal Sin. Now, I think I shall satisfy your Lordships that, although more than probable that from Bowles's Catechism you may easily ee the doctrine of Original Sin, you can nowhere deduce the doctrine e Trinity; and all that you can possibly infer from Bowles's Catechism at Lady Hewley was a believer in the doctrine of Original Sin, and perhaps, in the doctrine of the Atonement.

rd KENYON.—What do you say to the reference made in the question answer here?—"Who is Jesus Christ? The Son of God manifested in lesh;" and a reference is made to the 1st Epistle of St. Paul to Timo- 3rd chapter and 16th verse.

r. SOLICITOR-GENERAL.—I will come to that, my Lord, immedi- . Your Lordship has read a question from Bowles's Catechism. As uch turns upon this, I will call your Lordships' attention to some of questions and answers in Bowles's Catechism, beginning at the begin- . "Who made you? God, the Creator of heaven and earth. To end did he make you? He made me and all things for his glory. In condition did he make man? Righteous and happy. Did man con- in that estate? No, he fell from it by sin. What is sin?" Now we to the first variation. "What is sin? Transgression of the law of ?" I do not say that from what follows you may not infer that Bowles's chism meant to adopt the doctrine of Original Sin, but that is not the ine of Original Sin. In answer to the question, "What is sin?" in Assembly's Catechism, the answer is, "Sin is any want of conformity or transgression of the law of God." The distinction is most impor- because transgression of the law of God is only by the voluntary act e party offending or transgressing. "Want of conformity," may be thing over which the party has no control. It is quite advisedly, there- in the Assembly's Catechism, that the answer is not, "Transgression e law of God," but, "Transgression of or want of conformity unto:" Bowles's Catechism adopts merely "transgression."

en it proceeds—"What was the sin of our first parents? Eating the dden fruit. What was the fruit of that eating? It filled the world sin and sorrow. In what condition is the posterity of our first ts born? In a sinful and miserable condition. Wast thou born in condition? Yes, I was conceived in sin, and am by nature a child of h, as well as others. Hath thy life been better than thy birth? No, I added sin to sin, and made myself above measure sinful. What if thou

shouldest die—." Now it is from this expression alone that the doctrine of Original Sin is found in Bowles's Catechism: "What if thou shouldest die in the condition thou wast born and bred in? I should perish everlastingly. Is there no way to get out of this sinful and miserable estate? Yes," and so on. "What way hath God appointed? Only by Jesus Christ. What is Jesus Christ? The Son of God manifest in the flesh."

Now although I will admit that the expression in question, "The condition thou wast born and bred in," strongly leads me to say that I should come to the conclusion that Original Sin is propounded in this Catechism, I cannot admit the same as to the doctrine of the Trinity being to be found from this answer,—"What is Jesus Christ? The Son of God manifest in the flesh." One of your Lordships was so good as to refer me to the marginal reference to the chapter in Timothy: if I rightly understand this, this answer studiously goes out of its way not to give the expression in Scripture. The expression in Scripture is not, "The Son of God;" the Scripture is, "And without controversy, great is the mystery of godliness, God was manifest in the flesh." The question is, "What is Jesus Christ? The Son of God." So does every Unitarian say. Every Unitarian says that Christ is in their sense the Son of God. The Unitarians use it in the sense of Archbishop Tillotson. The Son of God, as I will presently shew your Lordships, was a phrase well known to the Jews, by which they always meant to designate the Messiah. Now this passage at least *prima facie* is a strong evidence in favour of the doctrine of the Trinity,—"God was manifest in the flesh." And when the question is put in the Catechism, "What is Jesus Christ?" had the intention of the party framing that Catechism been to enunciate the doctrine of Trinitarianism, certainly the answer to the question, "What is Jesus Christ?" would have been, "God manifest in the flesh." That would have put it beyond all doubt. Why did the author of this Catechism step out of his way to alter the words of Scripture? Instead of saying that which would of necessity have enunciated the doctrine of the Trinity, he has said something which does not of necessity enunciate it. He uses an ambiguous expression, which is caught hold of by Unitarians, and used by them as confirming their view; confirmed also, as it is, by the interpretation given to it by many of the most distinguished prelates of the Church.

My Lords, I have no means of diving into the mind of Mr. Edward Bowles, who has long ago, I hope, been in heaven, or is at least gathered to his fathers; but surely it is no strong proof of his having been imbued with Trinitarian doctrines, that in his Catechism, when there was the most obvious way of enunciating it in four words, if he had followed the language of the Shorter Catechism, by only assuming the words from the Epistle of Timothy, and in answer to the question, "What is Jesus Christ?" saying, "God manifest in the flesh," he adopted that which either a Socinian, an Arian, a Unitarian, or any other person, might have adopted, saying, "The Son of God."

Lord KENYON.—Do you conceive that, stating it in the way in which it is stated in Bowles's Catechism, any Unitarian could refer to that text and give an explanation of what he meant by it?

Mr. SOLICITOR-GENERAL.—Undoubtedly. I think I shall satisfy your Lordships of that most decidedly. Your Lordships are aware that upon the subject of this passage, the greatest possible controversy has arisen. Your Lordships know that a great number of the most eminent and learned divines do not believe that to be the text at all. The doubt is, whether this word "God," or "*Theos*," was not in truth only *Os*, the pronoun relative—"Great is the mystery of godliness"—Great is the mystery which was manifest in the flesh; and the error having arisen in this way, that what is now the Greek Theta with an *s* to it, was in truth originally *Os*, which was turned into *Theos* by the insertion of a horizontal mark

across, to denote contraction, and another in the middle of O, to make it a Θ. But in the other way it would read, "And without controversy, great is the mystery of godliness which was manifest in the flesh." The difference is this, OΣ and ΘΣ.

Mr. KNIGHT BRUCE.—It is, "το της ευσεβειας μυστηριον;" μυστηριον is neuter.*

Mr. SOLICITOR-GENERAL.—I am not competent to enter into any theological controversy. It is not necessary to my argument that I should do so. I only wish to put to your Lordships that these are matters of the gravest doubt. I have here before me a Bible published by a very learned and perfectly orthodox person, Dr. Adam Clarke, and he goes into it very much, and he gives it in favour of the usual reading, "Theos;" but he discusses it in the most temperate manner, and shews that a great many very learned persons have thought that the other is the right reading: but I think my learned friend will find that he is in a mistake about it.

Mr. KNIGHT BRUCE.—It is, "το της ευσεβειας μυστηριον." There is no mistake about it. Here is the Bible here.

Mr. SOLICITOR-GENERAL.—Certainly, I should suppose that would have been a false concord if that had been so. But I do not mean to intrude upon your Lordships any thing that would come so misplaced from counsel at your bar, as any discussion upon a question of this sort. But it is important that I should point out that this is altogether a matter of most serious discussion, and which never could be supposed to have formed any part of the practical grounds of the conduct of a lady like Lady Hewley. Your Lordships will find that in Bowles's Catechism there is enunciated something that shews that he was a believer in Original Sin, and that they intended to inculcate that. But I cannot come to the conclusion that there was any thing that meant to shew the doctrine of the Trinity. That is all I say. Then in answer to the question, "What is Jesus Christ?" he says, "The Son of God manifest in the flesh;" and as a proof for that, for every one of the answers has a reference to a particular passage of Scripture, (a circumstance not unimportant,) he refers to Galatians, the 4th chapter and 4th verse, and the First of Timothy, the 3rd chapter and 16th verse. He gives the answer, not in the words of Scripture, which would have put his meaning beyond all doubt, but he says, "*The Son of* God," instead of "God," which he must have known leaves it open to all those questions which were rife in his time, as they have been ever since.

Now what does this Catechism prove? Suppose that instead of shewing that she had said, Let every alms-body be able to repeat the Catechism of Mr. Edward Bowles—suppose it was in the strongest way proved that she said, Mr. Edward Bowles's Catechism contains my faith,—what then? It proves, if you please, that she entertained the doctrine of Original Sin, and perhaps of the Atonement. What then? Your Lordships have had it sometimes alluded to, when discussions are going on about this Decree, as if there was any thing in the Decree that had reference to the doctrine of Original Sin. There is nothing of the sort. Let me call your Lordships' attention to what is in the Decree. It is declared, "That ministers or preachers of what are commonly called Unitarian belief and doctrine, and their widows, and members of their congregations, and the persons of what are commonly called Unitarian belief and doctrine, are not fit objects of and are not entitled to partake." There is not a word about Original Sin. In the printed Judgment of his Honour the Vice-Chancellor, there is a statement that his Honour declared that "no persons that did not believe the

* This is true enough, and accordingly some MSS. read ὁ, the neut. pronoun, to which Sir Isaac Newton was inclined. Archbishop Newcome understands ὁς to mean *he who*. B. M.

doctrine of the Trinity, or that entertained Unitarian doctrines, and did not believe in Original Sin, were fit objects of Lady Hewley's charity." But nothing of the sort appears in the Decree.

Therefore, it is not material to consider whether Lady Hewley could be shewn to have been a believer in the doctrine of the Atonement or in the doctrine of Original Sin, unless by necessary implication it followed that, believing in Original Sin and the Atonement, she must have believed in the Trinity, or vice versâ, that disbelieving the one, she must have disbelieved the other. Now is that a necessary corollary? Does it follow that all persons who believe in Original Sin or the Atonement, necessarily believe in the doctrine of the Trinity? My Lords, the contrary of that is demonstrable on the very highest authorities. In order to prove that Lady Hewley believed in the doctrine of the Atonement, one course which has been adopted has been to read a passage from her will. She begins her will thus: "I, Dame Sarah Hewley, of the city of York, widow, having first committed my immortal soul into the hands of my dear Redeemer, to be washed in his blood and made meet to be partaker of the inheritance of the saints, and leaving my vile body," and so on. It is said that that necessarily propounds the doctrine of the Atonement: the argument is this,—believing in the Atonement, she must have believed in the Trinity.

My Lords, I now call your Lordships' attention to the will of Mr. Peirce, to which I shall presently advert,—Mr. Peirce, of Exeter, a great Arian, whose name will presently be called more particularly to your Lordships' attention. At present, let him only be taken to be the most leading Arian just after the death of Lady Hewley. Lady Hewley died in 1710, and he set the whole religious world in a ferment before the year 1720. In his will, he being a complete Antitrinitarian, he says, "I do sincerely and humbly commend my soul to God whenever he shall please to call me out of this troublesome and litigious world, professing my steady belief in one God, the God and Father of our Lord Jesus Christ, and in that one Lord Jesus Christ, in whom as my only Saviour I have fixed my trust, and through whose atonement and intercession alone I desire and expect to find mercy with that God whom I have greatly offended." Can any thing be more clear to shew that it does not necessarily follow that because a person believes in the doctrine of the Atonement, he believes——

Mr. KNIGHT BRUCE.—Where do you get that Will from?

Mr. SOLICITOR-GENERAL.—There is a sermon printed upon his funeral, and this is the sermon. I think your Lordships must come to the conclusion that it does not necessarily follow that because a person believes the doctrine of the Atonement, therefore he believes the doctrine of the Trinity. Nor does it follow that because you believe the doctrine of the Trinity, therefore you believe the doctrine of Original Sin.

My Lords, our own Church furnishes a memorable example of the contrary of that: Jeremy Taylor,—I believe nobody doubts that he believed the doctrine of the Trinity. He particularly said that he did not believe the doctrine of Original Sin. This is from a sermon of Jeremy Taylor's; this has been handed to me since I came into your Lordships' House: the Sermon is the Entail of Curses cut off: "No man is made a sinner by the default of another man without his own consent; for to every one God gives his choice, and sets life and death before every of the sons of Adam; and therefore this death is not a consequent to any sin but our own. In this sense it is true, that if 'the fathers eat sour grapes, the children's teeth shall not be set on edge;' and therefore the sin of Adam, which was derived to all the world, did not bring the world to any other death but temporal, by the intermedial stages of sickness and temporal infelicities. And it is not said that 'sin passed upon all men,' but 'death;' and that, also, no otherwise but ἐφ ω παντες ημαρτον, 'inasmuch as all men have sinned,' as they have followed the steps of their father, so they are partakers of this death. And

therefore it is very remarkable that death brought in by sin was nothing *superinduced* to man; man only was *reduced* to his own natural condition, from which before Adam's fall he stood exempted by supernatural favour; and therefore although the taking away that extraordinary grace or privilege was a punishment, yet the suffering the natural death was directly none, but a condition of his creation, natural, and therefore not primarily evil; but if not good, yet at least indifferent." That is the distinction pointed out by Mr. Locke in the Reasonableness of Christianity as delivered in the Scriptures. He says, "I nowhere find that the sin of Adam is imputed to any one. I only find his own sins imputed to him. I find that death came upon all men by Adam's fall."

In Bishop Heber's Life of Jeremy Taylor, page 226, this is what Bishop Heber says: "Taylor, however, went on to deny that the depravation of man's nature after the fall was so total as had been generally apprehended, and to attack the conclusions of the Westminster Divines, who maintain not only that man was 'very far gone from original righteousness,' but that he was altogether perverted and incapable of any thing but evil. He asserted, on the contrary, that amid the deplorable ruin of the world, some fragments of the Divine Image might yet be discovered; that not only freedom of will remained, but that in some particular cases the tendency of man was on the side of virtue." Then I would refer your Lordships to another much more modern quotation upon this subject, which is from Professor Hey's Lectures at Cambridge, who I think was Professor at the time I was at the University. He says, "Original sin has been usually opposed to actual sin. It is called Birth-sin, because men fall into it by birth, either being so born as to appear in the state of offenders, or by being born in such circumstances that their propensities will in the common course of things be disorderly."

And Dr. Tomline says, in his Elements of Christian Theology, pages 241 and 242, "As the Scriptures do not inform us what were the full and precise effects of Adam's disobedience upon his posterity, it is perhaps scarcely to be expected that there should be a uniformity of opinion among divines upon that point. We may, however, observe that the difference between those who confine original guilt to a mere liability to death and sin, and those who extend it to a liability to punishment also, is not very material, since both sides admit that Christ died as a propitiation for all the sins of the whole world, whatever were the nature and character of those sins."

It is quite clear, therefore, that there have been eminent divines of the Church of England, who, of course, were Trinitarians, who have treated the doctrine of Original Sin as a matter comparatively of little importance. But there has been Mr. Peirce, an Arian, who certainly did believe the doctrine of the Atonement. Now I will shew your Lordships that there have been other Unitarians who believed the doctrine of Original Sin, although they did not believe the doctrine of the Trinity. There is a Catechism by the Rev. Samuel Bourn, who was an Arian, published in the year 1738, under the head of Lectures for Children and Young People, and at page 50 there is this,—"Wherein consists Original Sin? In the disorder of bodily appetites and passions which render men very liable to sin. In a liableness to die for or through or in consequence of Adam's sin, yet by acting well may we not make this violence of our appetites and passions, our frailty and mortality, subservient to our greater virtue and happiness? Yes. Is Original Sin properly called sin? No, it is properly suffering, not sin; for sin is a wilful transgression of God's law; but to be born as we are transgresseth no law."

Then, in a work by Milton, published some ten years ago, his Treatise on Christian Doctrine, pages 260 and 261, there is this passage,—"Sin is distinguished into that which is common to all men and the personal sin of each individual. The sin which is common to all men is that which our

first parents, and in them all their posterity, committed when, casting off their obedience to God, they tasted the fruit of the forbidden tree." There is a specimen of a decided Antitrinitarian, an Arian, as Milton clearly was, admitting and avowing the doctrine of Original Sin. In another passage he says, "Evil concupiscence is that of which our original parents were first guilty, and which they transmitted to their posterity as sharers in the primary transgression in the shape of an innate propensity to sin."

It seems to me, therefore, from these, to follow that even if you can make out by the direction given by Lady Hewley, that the almswomen should be able to repeat Bowles's Catechism,—that she was attached to the doctrines of that Catechism,—that you only make out that she was attached to the doctrine of Original Sin and the Atonement, and that neither of those things are followed by the necessary corollary that she was a maintainer of the doctrine of the Trinity; and that is all that is material to the question, because, unless the doctrine of the Trinity involves the other, the Decree is wrong. The Decree says nothing about Original Sin or the Atonement, but it merely says that parties are not fit recipients of Lady Hewley's bounty who maintain what are called Unitarian opinions.

Now, with regard also to the doctrine of the Atonement, many passages are put into my hands shewing the extreme difference of opinions that has existed amongst learned divines of the Church of England. On the precise nature of that doctrine, in a celebrated work of Bishop Butler's, his Analogy, page 247, there is this passage: "Some have endeavoured to explain the efficacy of what Christ hath done and suffered for us beyond what the Scripture hath authorized; others, probably because they could not explain it, have been for taking it away, and confining his office as Redeemer of the world to his instruction, example and government of the church. Whereas the doctrine of the Gospel appears to be, not only that he taught the efficacy of repentance, but rendered it of the efficacy which it is by what he did and suffered for us; that he obtained for us the benefit of having our repentance accepted unto eternal life; not only that he revealed to sinners that they were in a capacity of salvation, and how they might obtain it, but moreover, that he put them into this capacity of salvation by what he did and suffered for them, put us into a capacity of escaping future punishment and obtaining future happiness. And it is our wisdom thankfully to accept the benefit by performing the conditions upon which it is offered, on our part, without disputing how it was procured on his."

Then, quitting this subject of the doctrines that are to be deduced from Bowles's Catechism, I merely make this remark—that Bowles's Catechism has no reference whatever to the first deed, that it seems to have been rather used by Lady Hewley as a test that the almswomen were persons who had been virtuously and religiously brought up, that she did not mean by that to propound that as a test of her own faith; and even if I am driven from all these positions, then I say that if she did, that Bowles's Catechism not only does not announce the doctrine of the Trinity, but by a variety of cogent arguments leads to the inference, that although Mr. Edward Bowles might himself have believed that doctrine, he so framed this Catechism as to include all persons who did or did not believe that doctrine, who took the words "the Son of God," either in the common sense, or in the sense in which it is used by Unitarians and was used by Archbishop Tillotson. Before quitting that part of the subject of Bowles's Catechism, my attention has been just called to an explanation of the Greek part of the argument about the *Theos*, which I was not informed of. The doubt is, whether this word is *Theos* or *Os*, the way in which the *Theos* is written in the Greek manuscript being with *Theta* and *s*, and the *Theta* differing only from the *Omicron* by having a mark across the middle of it, which was supposed by Sir Isaac Newton and by Griesbach to be incorrect,—so that it is *Os*, and not *Theos*, and that the way to construe it is this, "Great is the mystery of

godliness;" *Os*, that is, he who was manifest in the flesh has been received into glory, *Os* meaning "he who." Whether material or not, I wished only to set myself right, that whatever force there is in the argument, it might be given correctly. That is Sir Isaac Newton's notion, and that is the construction adopted by Griesbach, that there is no such passage in scripture as that which is the ordinary reading in Timothy; but that it is, "He who was manifest in the flesh has been received into glory." And in conformity with that, Mr. Edward Bowles translates it, "The Son of God manifest in the flesh."

Lord KENYON.—You do not suppose that Lady Hewley was at all cognizant of that criticism by Sir Isaac Newton, or that she was cognizant of any thing but the authorized version.

Mr. SOLICITOR-GENERAL.—In all probability not. But all I am arguing upon is this, that Bowles's Catechism is, with the exception of the will, the only document which is relied upon as proving the Trinitarianism of Lady Hewley; and I say that, supposing it proves any thing, it does not prove that she meant Trinitarianism to be the test under that other deed which had no reference to Bowles's Catechism: it does not prove that she meant Trinitarianism to be any test, except as to the almswomen. But, more than that, I say that Bowles's Catechism does not propound Trinitarianism, although it may be taken to propound Original Sin and the Atonement. I endeavoured to shew your Lordships that there are persons who believe the Atonement, who do not believe the Trinity; that there are persons who believe Original Sin, who do not believe the Trinity; and that there are distinguished prelates in the Church, who believe of course the Trinity, but do not believe Original Sin, and do not believe the Atonement. So that the one does not at all necessarily follow as being a corollary from the other. You may believe Original Sin without believing the Trinity; you may believe the Trinity without believing Original Sin. And Bowles's Catechism, if it proves any thing, merely proves that the author of the Catechism was a believer in Original Sin and the Atonement.

I am now about to quit that part of the subject, and merely remind your Lordships, by way of recapitulation, that my proposition was first this—that, as to each of the deeds, I can construe them by what I find within their four corners,—admitting, however, that with reference to the second deed, the rules and heads made in pursuance of the deed may be coupled with them; that in construing the first deed, there is nothing whatever hinting at any doctrine at all; and that in the second deed, there is nothing from which you can find out any doctrine, except so far as it is to be collected from Bowles's Catechism, which does not propound the doctrine of the Trinity at all.

But I now come to that part of the case which I approach with the greatest difficulty and the greatest diffidence, because your Lordships will see immediately that I shall be addressing your Lordships upon a subject with which of course it is very clear that I cannot be at all familiar. I have had the advantage of the assistance of very learned persons, who have been so good as to instruct me in that which I am now about to address to your Lordships; and any imperfections upon my part, I trust your Lordships will supply by your kindness and by your investigation of the subject. But the proposition I have now to contend for is this: Suppose me to have failed in satisfying your Lordships that these deeds are to be construed by that which we find in these deeds, and by that only,—suppose me to have failed in satisfying your Lordships that Lady Hewley was not a Trinitarian,—and suppose you to be satisfied that she was a Trinitarian, that she believed in that doctrine as well in the doctrine of the Atonement and Original Sin,—a very important question still remains behind:—Are your Lordships to infer that, believing in the Trinity and believing in the Atonement, she meant to make a belief in those doctrines which she believed, a condition

precedent on the part of those who were to receive her bounty? That is a question of very great importance indeed, because it extends over charities innumerable. It extends over charities not only of this sort, but foundations of chapels, foundations of libraries and charitable institutions, schools, colleges, libraries, chapels and eleemosynary establishments; and that for which I wish now to contend, and which I most sincerely trust I shall contend successfully, is this—that there is nothing whatever, not only within the four corners of the deeds, but in the state of society at the time when Lady Hewley executed those deeds, that can lead to the inference that she meant a conformity to her belief to be a condition precedent to receiving her bounty.

Now, in order to consider this subject rightly, it will be necessary shortly to call your Lordships' attention to what had been the progress of religious dissent in the country. Your Lordships will of course recollect (if the word "recollect" can properly be applied to a subject of remote antiquity) that in the year 1662, a very large portion of the Church of England were ejected from their benefices, and formed those separate societies about the country, the nature of which was, in truth, one of the main ingredients in the history of those times. There had been at the time of the ejectment of the ministers, a very popular sect in the Church, that had at one time had the ascendancy, and had always been a very important, if not the most important, sect of the Nonconformist party, and that was the Presbyterians. Probably, at the time of the Civil Wars and previous to the Civil Wars, the original intention and hope of these parties had been to form a system of Presbyterian government in England, similar to that which had been established in Scotland and at Geneva. But that was never very well defined; and though they were called Presbyterians, they certainly wanted a great many of what were the tests of that body. They had not the Synods and Presbyteries, and so on, which characterized the Scotch Church. They, however, and the other great prevailing sect,—which, though not so numerous, was still very numerous,—the Independents, who had sprung up previous to the Civil War, had more or less of them got into the benefices of the Church, but they were all ejected upon their refusing to comply with the Act of Uniformity.

My Lords, whatever might have been the original form of those parties, although the one took its name from the special nature of its church government, being governed by Presbyteries, Synods, and so forth, and the other took its name from each being a separate, independent church, and sometimes for that reason called Congregationalists,—whatever, I say, had been the original line of distinction, when all of them were turned out of their livings, and none of them could look forward with any hope to constituting a church of their own in this country, though they retained the names which they had always had, they very shortly ceased to have that as their distinguishing characteristic. If a person at the end of the reign of Charles the Second, talked about being a Presbyterian, he certainly did not mean that he was a party who looked to forming a Presbytery as a mode of governing the Church. The Independents, indeed, might have retained their notion of church government, because that was quite consistent with the existence of an Established Church independent of themselves. But the Presbyterians, certainly, though they retained their name, retained it merely as a handle. They might be designated as Presbyterians as distinguished from other classes of Dissenters, but they entirely receded from what was the original distinctive mark of that sect.

My Lords, these parties during their comparative prosperity at the time of the Civil War, and up to the time of the Act of Uniformity, had been exceedingly violent and hostile and angry with one another, vastly rancorous about minute points of church government and minute points both of discipline and doctrine, which are scarcely to be credited in modern times.

But they were all, however, turned out from their livings, and then the result of a long series of twenty-five or thirty years of suffering was, that those rancorous animosities very much subsided, and before the passing of the Act of Toleration, there had sprung up among the class of Presbyterians a body of very distinguished persons, whose doctrine (if it can be called doctrine) was to throw aside all those questions about speculative theology, and to press, as the only doctrine useful to be circulated amongst mankind, the doctrine of Christian charity, that might be common to all sects. One of the most eminent amongst the parties who arose, as it were, as the head and founder of this sort of middle way, as it may be called, was the celebrated Richard Baxter. He was far from being an enemy of the Church. He had a great deal of attachment to the Church. But still he was one of the Nonconformist Ministers, who propounded doctrines of that sort, and, without actually renouncing any of the doctrines in which he had been brought up, he in fact always inculcated practical rather than speculative piety, and being a person of very great authority and great weight from his talents and virtues, had the effect of raising up a sort of sect that went by the name of Baxterians.

Now, I mention this only for the purpose of shewing that at the time that Lady Hewley founded her charities, if we are to infer what was the probable intention from the then state of society at the time of the foundation of those establishments, there did exist a class of persons who made it their characteristic distinction that they would not by way of test look to any thing in the belief of parties, but wished to apply the test to practice. My Lords, Baxter had, I have no doubt, an ulterior object in this. Baxter seems, from what I have seen of his works, to have had strongly impressed upon his mind a notion, which certainly prevailed with many of the most distinguished ornaments of the Church—for example, Bishop Burnet—that it was not a chimerical hope that you might reconcile the Church with the great body of Protestant Dissenters: that in order to do that, it was exceedingly desirable to get rid as much as possible of all tests and subscriptions, that all parties might, to use their own expression, "become again one fold under one shepherd." My Lords, in the zeal of those parties to accomplish this great object, they adopted what some party describes, in some one of the books referred to upon the subject, a sort of Latitudinarian view; they had such a horror of subscriptions and tests, that it became to be a distinctive mark of that class that they would not allow any person to impose any test whatever. "I believe the Scriptures as the revealed will of God,"—that was the answer that they were taught to make in one form or another to every thing that required of them a subscription or a test as to what their doctrine was.

Now the proposition for which I am to contend, and which I trust I shall satisfy your Lordships is probably the real solution of this case, is this,—that Lady Hewley, and those with whom she lived, belonged to those whom I may call the Anti-Test class in the world, who were determined that they would run all risks as to the possibility of error growing up, rather than drive parties to establish any test or any subscription as to what their opinions were. Now, if I satisfy your Lordships of that, if I can make it appear probable to your Lordships, that Lady Hewley, even supposing she had a belief in those mysterious doctrines as to which we have had reference, still held as a part of her faith and belief that she was in no circumstances justified in imposing that upon others,—then I get a great way to satisfy your Lordships that these deeds, so laboriously prepared, prepared under the advice of counsel and with the assistance of learned and eminent divines who were attending upon her, did not unadvisedly use those general expressions, but adopted that latitude of expression, "godly persons and godly preachers in distress," avowedly because, according to her conscience, she thought it was the most correct mode of serving God.

My Lords, this latitude was confined to one sect of Dissenters, to Presbyterians only, meaning by Presbyterians, not what Presbyterian has got to mean in these latter times, but meaning a class which had originally been for a government that was conformable with the government of the Church in Scotland. My Lords, Lady Hewley was of that sect. That appears from a passage in the answer of Mr. Wellbeloved, which was read by my learned friends, and forms part of the evidence in their case. It is page 33 in the Appendix to the Appellants' Case: "The defendant says that he believes it to be true that Dame Sarah Hewley, in the Information mentioned, was a person of great piety and a Dissenter from the Established Church, and that he has heard and believes that she belonged to the class of Dissenters called Presbyterians."

Lady Hewley, therefore, was of the class called Presbyterians, as distinguished from Independents and Baptists, who were the other great classes of Dissenters. There is no doubt of that, for it appears in a passage in Drake's Eboracum, a History of York, in which there is this passage,—"When left a widow with a plentiful estate, Lady Hewley employed a great part of the income in works of charity. She built a hospital in York in 1700, for poor persons, allowing them stipends in her life-time, placing this inscription over the door,—'This Hospital was founded and endowed by Dame Sarah, the relict of Sir John Hewley, of the city of York, Anno Domini 1700. Thou, O God, hast prepared of thy goodness for the poor.' This lady died a Presbyterian, and the hospital was designed for ten old women of that persuasion." That is a mistake. It is very natural for the historian to infer that. But it is obvious there was no persuasion necessary. But Drake, in his Eboracum, describes it as a hospital for poor women of the Presbyterian persuasion.

It further appears that she built, or if she did not build, she endowed, a chapel at Saint Saviour-Gate, at which Mr. Hotham was the preacher, and where he continued the preacher till about the year 1755, when Mr. Cappe was elected preacher. Mr. Cappe was elected preacher in 1755, and continued till 1799, when Mr. Wellbeloved was elected and has been so ever since.

My Lords, after the Act of Toleration in the year 1688, an attempt was made three years after the passing of the Act, to unite together all the classes of the then discordant Dissenters,—the Independents, the Presbyterians, and, I believe, the Anabaptists also. My Lords, in the 1st volume of Calamy's Life of Baxter, there is an account given of this attempt on the part of those different religious sects, at page 476: I will not trouble your Lordships by reading it, because it is merely a detail of what are called the Heads of Agreement, assented to by the United Ministers: "The following Heads of Agreement have been resolved upon by the United Ministers in and about London, formerly called Presbyterian and Congregational, not as a measure for any national constitution, but for the preservation of order, in our congregations." The Anabaptists do not seem to be included, but the Presbyterians and Independents endeavoured to make this Union among themselves, and they thought they had succeeded. They came to what was called at the time, "the happy Union."—There is a long detail here; I am stating it shortly, but I believe with sufficient accuracy. Now that Union lasted only three years; for in the year 1694, the parties separated, and "the happy Union," as it was called, was entirely broken up. I will call your Lordships' attention to one or two passages upon the subject, that will illustrate what was the state of religious feeling at that time, which was just shortly before the foundation of these deeds. Bishop Burnet, in his History of his Own Times, 2nd vol. folio edition, page 248, has this passage,—"The Dissenters behaved themselves more quietly, with relation to the Church; they having quarrels and disputes among themselves. The Independents were raising the old Antinomian tenets; as if men, by

believing in Christ, were so united to him, that his righteousness became theirs, without any other condition besides that of their faith; so that though they acknowledged the obedience of his laws to be necessary, they did not call it a condition, but only a consequence of justification. In this they were opposed by most of the Presbyterians, who seemed to be sensible that this struck at the root of all religion, as it weakened the obligation to a holy life. The Presbyterians had been also engaged in disputes with the Anabaptists,"—and so on.

My Lords, there is a book which was published in 1697, which is entitled, "The Growth of Error, being an Exercitation concerning the Use and Progress of Arminianism, and more especially Socinianism, both Abroad, but now of late in England," and the writer says—"Great and pernicious errors having been insensibly spread throughout this nation, an account of their rise and progress, and of the various methods which have been taken for their propagation, will not, I presume, be necessary. As there are gradual reverses from the truth, the first and least observable turn from it prepares the way for greater; but while near unto truth, the error is so like it, that it cannot be easily discerned or detected; and he who makes the first step towards it, doth, ere he is aware, slide into greater. How many slide into Arminianism, and from thence pass over to the tenets of Socinus! The Arminians, who pretend a middle way between the Orthodox and Socinian, are in the twinkling of an eye fallen under Socinus his banner. It is apparent that Arminian errors lead the way to Socinian."

In a book by Dr. Toulmin, a distinguished Dissenting Minister, entitled, "History of Protestant Dissenters," published in 1814, page 214, there is an account of the breaking up of what is called "the happy Union:" "But the progress of the controversy has been anticipated by introducing here the appeal made to those eminent divines of the Established Church. For previously to this stage of it, a design was formed to exclude Dr. Williams," (he was the great Presbyterian head at that time,) "out of the lecture in Pinners' Hall in 1694. A new lecture was set up at Salters' Hall: three of the old lecturers, Dr. Bates, Mr. Howe and Mr. Alsop, accompanied him to the new lecture, and two others were added; and four were joined to the old lecturers, Mr. Mead and Mr. Cole, who remained at Pinners' Hall. The supporters of the new lectures consisted of the greatest part of the old subscribers; men of great piety and judgment, who, perceiving the violence of the other party, when all pacific proposals and measures had proved abortive, removed to a more convenient place. Thus the lecture was broken into two." He goes on to say soon afterwards, "Another effect of this controversy was," that is, the breaking up of "the happy Union," "that from the time of forming a new and a separate lecture at Salters' Hall, the two denominations of Presbyterians and Independents became distinct communities, and acted separately, with respect to their own denominations. And the ground of this separation being in doctrinal sentiments, the terms came afterwards to signify not a difference in church government, according to their original meaning, but in doctrinal opinions; the latter being employed to denote the reception of Calvinistic, the former to signify the belief of Arminian, sentiments, or respectively of creeds similar to either system."

Now, my Lords, it is plain from this passage, that at the time of the separation of these two churches, the greater latitude of opinion existed on the part of the Presbyterian body, and the greater strictness on the part of the Independent. I will shew your Lordships what was the consequence of this; I am not saying whether right or wrong; but the consequence was, that the more Latitudinarian party, taking to themselves the credit for great liberality, gradually got to make it a part of their tenets to exclude any thing like a test.

Mr. Hallam, in the 3rd volume of his "Constitutional History of England," p. 237, has this passage: "A similar relaxation of the terms of

conformity would, in the reign of Elizabeth, or even at the time of the Savoy conferences, have brought back so large a majority of Dissenters, that the separation of the remainder could not have afforded any colour of alarm to the most jealous dignitary. Even now it is said that two-thirds of the Nonconformists would have embraced the terms of re-union. But the motives of dissent were already somewhat changed, and came to turn less on the petty scruples of the elder Puritans, than on a dislike to all subscriptions of faith and compulsory uniformity. The Dissenting Ministers, accustomed to independence, and finding not unfrequently in the contribution of their disciples, a better maintenance than Court favour and private patronage have left for diligence and piety in the Establishment, do not seem to have much regretted the fate of this measure." That was the attempt to reconcile the Dissenters and the Church. "None of their friends in the most favourable times have ever made an attempt to renew it."

My Lords, when one is endeavouring, by reading a few detached passages, to impress upon the mind of any audience whom he may be addressing, a notion as to what was the general result and the general feeling at a particular period of society, one is necessarily placed in a very great difficulty, because it might always be said, However many passages you read, you only multiply them; other passages might be found having a contrary bearing. My Lords, I feel that; and this book having collected together, partly set out in print and partly by reference, a variety of passages strongly bearing and relating to these propositions, I have endeavoured rather to select one or two, which shall give a taste, as it were, of the whole, than to attempt to weary your Lordships by reading others that would only be multiplying over and over again the same propositions. I shall, however, still run the risk of wearying your Lordships by calling your Lordships' attention to one or two more passages, which have the same object in view, shewing the reluctance on the part of the Presbyterians of old to adopt any thing like creeds.

In the Life of Calamy, a distinguished Presbyterian, there is this passage: "I read over Chillingworth's 'Religion of Protestants a Safe Way to Salvation,' and came to an issue with him," (which I suppose means agreed with him,) "that the Bible was the Religion of Protestants. To that, therefore, I determined firmly and inviolably to adhere. But this celebrated work of the greatest champion the Protestant cause ever had, Mr. Chillingworth, being very commonly represented by persons of distinction in the Established Church as a model of clear, strong and fair reasoning, a book very fit to form a man's mind, give him a right ply, and put him upon a true scent,—I for that reason dwelt the more upon it, and shall be at the pains of here transcribing some of the remarks I made. I could not help admiring a great many of the principles he lays down, as this particularly: That no error is in itself destructive and exclusive from salvation now, which was not then: if, instead of being earnest Calvinists, rigid Lutherans, (or zealous Churchmen,) they would become themselves, and be content that others should be, plain and honest Christians; if all men would believe the Scripture, and, freeing themselves from prejudice and passion, would sincerely endeavour to find the true sense of it, and live according to it, and require no more of others but to do so, not denying their communion to any that do so, would so order their public service of God, that all which do so may without scruple, or hypocrisy, or protestation against any part of it, join with them in it; who doth not see, that seeing all necessary truths are plainly and evidently set down in Scripture, there would of necessity be among all men, in all things necessary, unity of opinion, and notwithstanding any other differences that are or could be, unity of communion and charity and mutual toleration? By which means all schism and heresy would be banished the world, and those wretched contentions which now rend and tear in pieces, not the coat, but the members and bowels of Christ,

chism of Heidelburgh; nor the Articles of the Church of England; no, nor the harmony of Protestant Confessions; but that wherein they all agree, and which they all subscribe with a greater harmony, as a perfect rule of their faith and actions, that is, the Bible. The Bible, I say, the Bible only, is the religion of Protestants. Whatsoever else they believe besides it, and the plain, irrefragable, indubitable consequences of it, well may they hold it as a matter of opinion. But as matter of faith and religion, neither can they, with coherence to their own grounds, believe it themselves, nor require the belief of it of others, without most high and most schismatical presumption. I, for my part, after a long, (and, as I verily believe and hope,) impartial search of the true way to eternal happiness, do profess plainly that I cannot find any rest for the sole of my foot, but upon this rock only."—"I with care read over the Articles, Liturgy, Homilies and Canons of the Church of England, which contained the English impositions, and weighed the terms of conformity as the law had settled them, and found several things required, which, after the strictest search and inquiry I was able to make, I could not perceive God had given any man power or commission to impose upon others, or discern how my compliance could be proved a proper duty. I could not see but that in such things God has left me full liberty to act as most inclined, since man had done so too, by the Act passed in Parliament for Toleration."

My Lords, I do not go on reading further, because there are passages innumerable in the same spirit, from the works of Calamy, the works of Baxter, and other distinguished writers of the Presbyterian school, from all of which it is plainly to be deduced, that it was the opinion of those distinguished persons that any imposition of tests in the fallible words of men, as they say, and not in the infallible words of the Gospel, was a thing to be deprecated and in every way to be put down.

Now, my Lords, there is one passage in page 21 of these quotations, to which I would call your attention. Baxter had published a sort of Confession, that is, a statement of his opinions. He first attacked a distinguished Trinitarian, an Independent, Dr. John Owen; and Dr. John Owen wrote a work to vindicate himself from this attack of Baxter's. There is a quotation from it printed at the 21st page: "What shall I then do?" Owen says; "shall I put forth a creed or an apology, to make it appear that indeed I am not concerned in any of Mr. Baxter's contests? But I dare not look upon myself of any such consideration to the world as to write books to give them an account of myself. I know there is no need of any such thing; for all that know me, or care to know me, know full well that in and about the doctrine of justification by faith, I have no singular opinion of my own, but embrace the common, known doctrine of the Reformed Churches, which, by God's good assistance, in due time I shall further explicate and vindicate from Papists, Socinians and Arminians." Now, my Lords, observe this: "I must add, if for a defensative of myself, I should here transcribe and subscribe some creed already published, I must profess it must not be that of Mr. B., which he calls the Worcestershire Profession of Faith, and that, as for other reasons, so especially for the way of delivering the doctrine of the Trinity, which but in one expression at most differs from the known confession of the Socinians, and in sundry particulars gives too great a countenance to their abominations: for instance, the first article of it is, 'I believe that there is one only God, the Father, infinite in being,' &c., which, being carried on towards the end, and joined to the profession of consent, as it is called, in these words,—'I do heartily take this one God for my only God and chiefest good, and this Jesus Christ for my only Lord, Redeemer and Saviour,'—evidently distinguishes the Lord Jesus Christ, our Redeemer, as our Lord, from that one true God, which not only directly answers that question of Mr. Biddle's" (a noted Unitarian), "'How many Lords of Christians are there in distinction from this one true God?'—but in terms falls in

with that which the Socinians profess to be the tessera of their sect and churches, as they call them, which is, that they believe in the one true living God, the Father, and in his only Son, Jesus Christ, our Lord. Nor am I at so great an indifferency in the business of the procession of the Holy Ghost, as to those expressions 'of, from and by the Son,' as that confession is at, knowing that there is much more depends on these expressions as to the doctrine of the Trinity, than all the confessionists can readily apprehend."

This was an attack by a decided Trinitarian during the life of Baxter, against him, one of the most leading prophets, I had almost said, of the Presbyterian sect,—attacking him because he said he does not hold correct doctrines of the Trinity. He says in substance this,—"That is the necessary consequence of your Latitudinarianism in not imposing a test; I say a test is essential; I say that there is so much more in this difference of form than you are ready to admit, and the consequence of your rejecting a test is to let in Socinianism—to let in a disbelief of the Trinity." Now that Baxter was the most leading of the Presbyterian sect, is a matter perfectly well known in history; and that Lady Hewley was attached to that sect, is equally well known. It is equally well known, in this cause at least, as being in evidence, and therefore we find this,—not only that she was connected with a sect which disliked the imposition of tests, but that she was connected with a sect, at the head of which was an individual who was attacked at that very period, by a learned divine upon the opposite side of the question, as rejecting tests, and thereby leading to the introduction of Antitrinitarian opinions. That which Owen here refers to is precisely what your Lordships find in Bowles's Catechism. Bowles takes exactly the same course. In answer to the question, "Who is Jesus Christ?" he says, "The Son of God manifest in the flesh;" which, according to this statement of Dr. Owen, very truly lets in any interpretation you please.

It has been said that this system of merely answering, as Baxter would do, with words out of Scripture, as Mr. Wellbeloved does now, is making of it what was called in old times a nose of wax; you may mould it to any shape. My Lords, that may be, and it may be a very erroneous mode of teaching Christianity and theology; but what I am concerned in shewing is, that it is the mode which those who were the heads and leaders of the sect to which Lady Hewley belonged, adopted, and adopted as the characteristic of their sect.

My Lords, there has been published by one of the gentlemen who have been examined by the Relators, (Dr. Bennett,) in recent times, a history of modern Dissent—a very able book, in which the practical effects of this system, of not requiring a test, is very forcibly pointed out. The passage is printed at length at pages 62 and 63 of the documents before your Lordships. The whole is so long that I will not attempt to read it at length; I will only call your Lordships' attention to one or two passages in it. In page 63, he says,—"The Presbyterians differed widely among themselves. By some, the old Puritanical system was retained, and in their sermons they brought forward the doctrines of the Gospel in the most prominent manner; others, though professing the same creed, did not so frequently introduce them, nor so fully enter into them. When they preached on any evangelical topic, they did it with propriety, and shewed they were sound in the faith. But the ordinary strain of their preaching was more on general principles of religion; and they spent much of their time in explaining and enforcing the precepts of Christianity. The habitual display of the vital truths of the Gospel, for which the Nonconformists were distinguished, was thrown aside. The generous wine is so dashed with water as to render the beverage vapid, unpleasant and not nutritive."

Now that very clearly and forcibly illustrates what I believe to be the progress that things were at this time making. First, there is a determination to reject subscriptions and tests, and so forth. It is unlawful to preach

any of those unorthodox doctrines. What is the course pursued? Not that they violate the law, but that they simply do not preach Trinitarian doctrines. It is impossible to trace the progress of these things. They go on so silently and imperceptibly that they evade all observation. They first do not require a test. Then they cease to preach doctrinal subjects. They preach only on what are called here, by way of distinction, the precepts of Christianity, and so gradually slide into those Arian or Unitarian errors.

"Arianism," it is said here, "which was gradually extending its circle, furnished two classes of preachers. The first concealed their sentiments under ambiguous expressions, which their orthodox hearers might turn to the support of their own system, and the Arian converts might interpret in their favour. Many wore this disguise all their days, and the most cautious carried the secret with them to the grave." "In the state of their seminaries may be found another cause of Presbyterian heresy. The fears of persecution having vanished, and the fierceness of High-Church bigotry abated, the office of a minister was respectable in the eyes of Dissenters. Though not lucrative, it was coveted by many, and good parents often wished to see a promising son a Preacher of the Gospel. From his father's house he went to the seminary, a well-instructed and well-behaved young man; no decided religion appeared in him, and it was not required. In some of the seminaries, controversy was too much in vogue. Those who adopted the new opinions were eager to make converts. Such students too readily imbibed the poison, and came forth into the ministry, either concealing the face of error under the veil of truth, or openly avowing the Arian or Socinian system."

Your Lordships will not understand me as either vindicating the course pursued or censuring it. I have nothing to do with its propriety or impropriety. I only wish to call your Lordships' attention to this—that was the course of things which naturally ensued from this system; first of all, of requiring no subscription and no pledge of what the faith of the party was, and then gradually and insensibly subsided into different sentiments. Then it is said here,—"From the other evils which desolated the Presbyterian congregations, the Independents were in a great measure free. The rage for free inquiry, which was supposed not to be exercised unless the person adopted new opinions, was happily unknown;" that is, unknown to the Independents; "being beyond the charities of Candour, and generally considered as a sect excluded from her embraces, she was an utter stranger to them, and they had no intercourse with her. In general, too, they refused to hold any ministerial or Christian communion with such as they suspected to have erred from the faith, and would not receive them as ministers and brethren in Christ, or by their countenance and approbation bid them Godspeed."

My Lords, in the 66th page of that book, there is a quotation from a work called "Modern Pleas," which was published very soon after the death of Lady Hewley, in the year 1717, by a person of the name of Smith: he was a High Churchman, and he discusses both of those bodies, and he speaks of the Presbyterians as the *present moderation-mongers*. Now that is a most important expression, as indicating what the state of religious feeling among Presbyterians was at the time. He calls them "our modern moderation-mongers." And then, speaking of the Dissenters, after noticing first the Baptists and Quakers, he says, "Well, there is now but one set of Protestant Dissenters more, the nature of whose principles we are engaged to inquire after, and if we are disappointed here also of the inconsiderableness of our differences so much talked of, we know not where else to seek them; and these are generally known by the name of Presbyterians.—Their orthodoxy will do them no more hurt than the rest of their Protestant brethren.—Neither do the Presbyterian teachers now subscribe to what their predecessors (at least in name) called the Assembly's Confession of Faith; and therefore we are as much at a loss to know what the faith of

r of these sects of Dissenters now is, as if those books were never wrote. eir faith is the same now as then, why do they cease publicly avowing subscription? If their minds are altered in some points, why do not publish those alterations, and so, like the glorious St. Augustine, make iselves valued for their recantations? Or if, as some of them pretend, agree with Thirty-six out of our Thirty-nine Articles, why have they iven, some way or other, a public and common consent to them? But to be content with a bare negative creed, and to let the world only what they perversely deny and dispute, will tempt an honest and rtial man to think that either they are ashamed, as a body, to own their , or else are so perplexed in the matter, that they know not what they ve themselves." Can I possibly read any thing that shall more clearly what was the state of the Presbyterians at that time? That is only ı years after the death of Lady Hewley. Of course, if it was seven ı after the death, the probability is that it must have been about the at the time.

ɔw we establish this—that Lady Hewley belonged to that sect, of h the non-subscribing and non-declaring what their opinions were, was ıth the main characteristic. There was no distinction really existing t governing by classes, or synods, or any particular mode of govern- . There is no question whether the church was to be one, consisting ariety of orders in it, or whether each congregation was its own church. had ceased to be the real distinction between the parties, and, as Mr. am says, the real question was the subscribing to the articles or tests of at all. That was what they propounded as being their doctrine. You its origin in the feelings of Baxter himself, and those who were his emporaries; you see it avowed, and (which is the strongest of all possi- nodes of illustration) you see it attacked by its adversaries, and its fatal equences in point of error shewn by them.

y Lords, that being so, then Lady Hewley, one of this class of persons, utes these deeds. Now who had she about her? She was advised by most eminent counsel; she was devoting an almost princely fortune, ly £3000 a-year now, to these works of charity; she of course gave consideration to the subject; she named as her Trustees persons in lon, principally at least persons in London, and Dr. Colton, who was great friend and spiritual adviser; and she uses this latitude of expres- merely saying that it is to be given to "godly preachers of Christ's Gospel." My Lords, might it be that at this time she was not aware ıe prevalence of those heresies, and that that latitude of expression ıt probably let in to the benefit of her trust some that she would not emplate as proper objects? Was it unknown to her? On the con- , at this time those questions were as rife and as prevalent as they are —perhaps much more so.

ı that subject I direct your Lordships' attention to a passage from the of Bishop Burnet, which is to be found in pages 23 and 24 of this ed book. "This year," that is, in the year 1698, "Thomas Firmin, a us citizen of London, died. He was in great esteem for promoting charitable designs, for looking after the poor of the city and setting ı to work, for raising great sums for schools and hospitals, and indeed harities of all sorts, private and public. He had such credit with the st citizens, that he had the command of great wealth, as oft as there occasion for it, and he laid out his own time chiefly in advancing all designs. These things gained him a great reputation; he was called cinian, but was really an Arian, which he very freely owned before the olution; but he gave no public vent to it, as he did afterwards. He ied to promote his opinions after the Revolution with much heat; y books were printed against the Trinity, which he dispersed over the m, distributing them freely to all who would accept of them. Profane

wits were much delighted with this; it became a common topic in discourse to treat all mysteries in religion as the contrivances of priests, to bring the world into a blind submission to them. Priestcraft grew to be another word in fashion, and the enemies of religion vented all their impieties under the cover of these words. But while these pretended much zeal for the government, those who were at work to undermine it made great use of all this; they raised a great outcry against Socinianism, and gave it out that it was likely to overrun all; for Archbishop Tillotson and some of the bishops had lived in great friendship with Mr. Firmin, whose charitable temper they thought it became them to encourage."

My Lords, could it be possible that Lady Hewley and Dr. Colton, and the parties who were about her, and instrumental in the preparation of these deeds, were ignorant of all this, when it had made a great ferment and a great stir in the world, that Mr. Firmin had lived in great friendship with Archbishop Tillotson and some of the bishops? It was not done in a corner. It must have been perfectly well known to Lady Hewley that there was a danger that, if she did not guard against those errors, they might creep in, in the distribution of her charity. But she takes no notice at all of it; she simply adopts these general words, and not any restrictive words, "godly preachers of Christ's holy Gospel." And it is always to be borne in mind that it was a tenet of that sect, that if you believe in the words of Scripture, no person has a right to put any other test to you. My Lords, I am not interested in vindicating the propriety of this principle of the Presbyterians, but it was their principle. And if they thought that by leaving people to make inquiry, the truth must be the result, even if they thought the truth was Trinitarianism, they nevertheless did not choose to make Trinitarianism any test; does not it amount to this, that they chose to make a sacrifice to their own philosophic consistency, the result of which they trusted would be favourable to the truth, although it may have turned out to be the contrary?

My Lords, I have read a passage from Bishop Burnet. Those opinions not only were not unknown, but they were opinions that prevailed amongst the wisest and the best of men that this country has ever seen. I will now call your Lordships' attention to a passage from Mr. Locke's work on the Reasonableness of Christianity; I have got Bishop Law's edition of it; it is the third volume, page 109; it is in the "Vindication of the Reasonableness of Christianity." After Mr. Locke had published that book, he was attacked, and he published several Vindications, which, in truth, contained more than the work itself. In the first Vindication, at page 109, he says this,—"His next page," referring to a work attacking it, published by a Mr. Edwards,—"His next page, p. 112, is made up of the same which he calls not uncharitable conjectures. I expound, he says, John xiv. 9, &c., after the Antitrinitarian mode, and I make Christ and Adam to be Sons of God, in the same sense, and by their birth, as the Racovians generally do. I know not but it may be true that the Antitrinitarians and Racovians understand those places as I do; but it is more than I know that they do so. I took not my sense of those texts from those writers, but from the Scripture itself, giving light to its own meaning by one place compared with another: what in this way appears to me to be its true meaning, I shall not decline, because I am told that it is so understood by the Racovians, whom I never yet read; nor embrace the contrary, though the 'generality of divines' I more converse with should declare for it. If the sense wherein I understand those texts be a mistake, I shall be beholden to you if you will set me right. But they are not popular authorities, or frightful names, whereby I judge of truth or falsehood. You will now, no doubt, applaud your conjectures; the point is gained, and I am openly a Socinian, since I will not disown that I think the Son of God was a phrase that among the Jews, in our Saviour's time, was used for the Messiah; though the Socinians

understand it in the same sense, and, therefore, I must certainly be of their persuasion in every thing else. I admire the acuteness, force and fairness of your reason, and so I leave you to triumph in your conjectures. Only I must desire you to take notice, that that ornament of our Church, and every way eminent Prelate, the late Archbishop of Canterbury, understood that phrase in the same sense that I do, without being a Socinian. You may read what he says concerning Nathaniel in his first Sermon," and so on.

My Lords, that was published, I think, in 1690. It is quite plain, therefore, that before the time of Lady Hewley, it was a question in the religious world, whether the meaning of the phrase, "the Son of God," was not, as Locke here puts it, that which the "Son of God" meant among the Jews in the times of the Gospel,—in other words, the Messiah; that it did not mean that which the more strict supporters of the doctrine of the Trinity understand it to mean;—whether, in truth, Mr. Bowles's Catechism was not the more correct mode of putting it, rather than the Catechism of the Assembly, because Mr. Bowles's Catechism does distinctly put it in that way, "The Son of God manifest in the flesh."

My Lords, could Lady Hewley have been ignorant of all this? She might not have known of this precise passage, but being a person, as appears from innumerable quotations in this book, living with the most eminent divines, and her mind devoted to the subject, could it be possible that she did not know that such questions were afloat, and that if she meant to guard against the introduction of such heresies into her charities, it was essential to do so by express words? Could that have been unknown to her? Your Lordships see that all reasoning upon the subject would have come to an end, if she had said,—"persons preaching the Gospel of Christ according to Mr. Bowles's Catechism," or "according to the Catechism of the Assembly," or in any other words that should have brought it to the test. That would have removed all difficulty. She does not choose to do that. It is the principle of the sect to which she belongs, that that is an unrighteous mode of imposing upon the consciences of mankind, and she follows up that which is the doctrine of her sect, and says substantially, I take the consequences,—it shall go to godly preachers for the time being.

My Lords, whom does she select to find out the godly preachers? She selects certain individuals who would perform that office during their life, and she intrusts to them, without the slightest limitation, the duty and power of electing their successors. I have no doubt the meaning was this: I leave to you to exercise your best discretion; you shall choose those that come after you, and I do not impose any test; you shall look out and find who are, according to the language of my deed, "godly preachers of Christ's holy Gospel, for the time being." And who are the persons to whom she trusts this? My Lords, great endeavours have been made to search out, if it were possible, the history of those Trustees, and your Lordships, I am sure, will not feel that the parties for whom I appear, are at all acting improperly, in being pertinacious upon this subject. They are not acting for their own benefit, but they feel that there are not only those numerous recipients of this bounty depending upon it, but others also to a great extent, and therefore they have felt it their duty to spare neither time, nor trouble, nor expense, in investigating this matter to the bottom.

It has not, however, been in their power to find out the history of many of them. With regard to Dr. Colton, it is known that he was the spiritual adviser of Lady Hewley; and there is only one other to whom there has been any clear proof, who happens to be the party who was the survivor of the seven. One of the parties named was a person of the name of James Wyndlow. Now it is singular enough that he was the survivor of the seven, and upon his death, his funeral sermon was preached by an eminent Unitarian preacher. He died in the year 1760, and the sermon was preached by his son-in-law, who was the Rev. Edward Sandercock; and that sermon was

afterwards published in the year 1783. Owing to a misprint, it is stated to have been preached in 1770. It was in 1760, that being the year in which Mr. Wyndlow died. This is an extract from the Sermon:—"We have some of us lately followed to the sepulchre of the dead an aged servant of God, and a worthy member of this Christian society," (this was at St. Saviour-Gate chapel,) "one whose mind was early formed to the knowledge of God, and of Jesus Christ our Lord and Saviour; whose heart, when in youth, was open to the impressions of religion, which no temptation either from the men or things of the world could efface or weaken, as he advanced from youth to manhood. Religion and virtue took faster hold both of his head and of his heart; habits were formed conformably to his sentiments and dispositions. To the open profession, he joined the steady practice, of religion. He was what he seemed to be, within as without, experiencing the power, as well as appearing in the form, of godliness; sincerely desirous, therefore, and not only desirous, but zealous, to promote the fear of God, and the practical, not the speculative and controversial, faith of Jesus, as far as instruction, reasoning, exhortation, persuasion and good example, could serve to this end." Now that was a Sermon preached by Mr. Sandercock in the year 1760. In the Sermon, there is, further on, this,—"His character for integrity and ability, as well as disposition to charity, was so early established, that while he was even in the younger part of life, a lady of this city, who, from the zeal she had for the cause of religion and Christian liberty, founded one of the noblest charities, that has, and by her instructions ought to have, a particular regard to this county, and more particularly to this congregation, of which she long was an honourable member,—thought proper to constitute him one of her Trustees: this is more than 50 years ago. In that trust, none who were joined with him, or have since been added to him, or shall follow him, could or can be more diligent and faithful in the execution." Singularly enough, the Sermon is preached by an Unitarian preacher.

Lord WYNFORD.—He was his son-in-law: that accounts for his preaching the Sermon.

Mr. KNIGHT BRUCE.—Mr. Sandercock was Mr. Wyndlow's son-in-law.

Lord WYNFORD.—That accounts for his preaching the Sermon.

Mr. SOLICITOR-GENERAL.—He was a frequenter of that chapel; one of the eulogies passed upon him was, that he was zealous for religion, and that Lady Hewley, for the zeal she had for the cause of religion and Christian liberty, constituted him one of her Trustees. It is, at least, as strong to shew that he was an Unitarian, as the preaching of Lady Hewley's Funeral Sermon by Dr. Colton is to shew that she was a Trinitarian. My Lords, there are a number of quotations to shew that Mr. Sandercock was a decided Unitarian; but that will not be matter of controversy.

Mr. KNIGHT BRUCE.—No! that is denied.

Mr. SOLICITOR-GENERAL.—If that is doubted, I will read this. In the History of the Dissenting Churches, which was published in 1814, there is this account of Mr. Sandercock: "About the year 1756, he was concerned with Dr. Lardner, Dr. Chandler and Dr. Ward, in revising and publishing a work of the Rev. Moses Lowman, which he had himself intended for the press. The object of this work was to overthrow the generally-received opinions respecting the doctrine of the Trinity and the Divinity of Jesus Christ; and it has been appealed to with great confidence by some writers on behalf of Socinian principles." There is plenty more evidence of it. His funeral sermon was preached by the Rev. Mr. Wood, who was the father of Mr. Wood, one of the Trustees of this charity.

Mr. KNIGHT BRUCE.—No; the father of Mr. George William Wood, not of John Wood.

Mr. SOLICITOR-GENERAL.—I beg pardon; the father of the Mem-

›r Kendal. But, however, he was notoriously a Dissenting Unitarian ıer. My Lords, I have a great quantity of passages here, all pointing same result, but I do not feel that I should be justified in reading over, because it is only repeating the same sort of sentiment, coming lifferent authors, but all pointing to the general result, that there was, he time when these sects were formed, a gradual declension on the ›f the Presbyterians from what was considered orthodoxy, and an ›on of other doctrinal views, which finally led to the introduction of ıitarian errors, as we will call them.

›re is, however, one circumstance to which I do think it necessary to ›ur Lordships' attention, because it so very strongly, and in a compen- way, illustrates the proposition for which I have been contending. Lordships will recollect what I say is this—that Presbyterians, whe- ıey believe in the Trinity or not, did not make the belief or the non- a matter of so much importance as the non-subscribing to it. It d a sort of mania, if you please to call it so, which they had, that they would, by any consideration, be induced to signify by subscription belief of any particular opinions. This was illustrated in a very d manner indeed, in the year 1709. At the beginning of that year, eirce, from whose Will I read extracts, was a preacher at Exeter; and preaching there among the Presbyterian congregation, propounded ›f the Antitrinitarian doctrines. In consequence of that, a communi- took place from Exeter to the body of the Presbyterians at Salters' ıpon the subject; and the question was, what advice they should Meetings took place amongst the Presbyterian body upon the sub- ınd they agreed that they would send advice upon the subject, as to urse that should be pursued with Mr. Peirce; and then it was pro- that they should accompany it with a declaration of their own belief Trinity. That was revolting to their Presbyterian feelings. Not ıey did not believe in the Trinity, for it turns out that the majority ›ut they said, Though we do believe in the Trinity, we believe it ›e we find that we so interpret certain passages of Scripture; but we ›t impose it upon anybody else; and therefore we will give advice to ›ngregation as to what shall be done, but we will not accompany it ny declaration of our own belief of the opinions which Mr. Peirce has ned. We send our advice, but we do not subscribe to any opinions of ›rt. It was discussed whether that should be done or not; and there great division amongst the members in Salters' Hall. Fifty-seven, er, voted for what they called the Bible principle, that they would ›othing like subscription; fifty-three voted that it should be accom- l with a declaration that they did believe in the doctrine of the Tri- Sir Joseph Jekyll, giving an account of this meeting, said that the had carried it by four.

v, a stronger illustration of the principle which prevailed in the sect at me, or nine years after that time, cannot well be conceived, because it ı occasion, of all others, one would have thought, they would have felt elves called upon to make a declaration of their opinions upon this im- ıt point, upon which actually the majority did entertain orthodox opi- But because subscribing to any opinions and stating what was their otherwise than in the words of scripture, was contrary to their notion gious liberty, therefore they declined to make such subscription, and dvices without any such subscription to guide the parties to whom directed. The account of that is in various books. It will be found in pages 79 and 80, and at length in a variety of books which are referred to; but I will not weary your Lordships by reading it; I : I have stated it very accurately. I am not sure whether I explained hough the meeting was divided into fifty-seven and fifty-three, it was ;y-seven Presbyterians to fifty-three Presbyterians. It was a meeting

of all the denominations of Dissenters in London, and there were fifty-seven Presbyterians, who carried it against all the other body of Dissenters.

There is one other quotation, which I ought in its proper place to have read, from Locke. That is in page 121 of the same volume, in which he alludes to those quarrels that then existed among the Dissenters. I merely refer to it to shew that it was something that must have been known to Lady Hewley. In "the beginning of the year in which it was published," (that was in the last few years of the 17th century,) "the controversy that made so much noise and heat amongst some of the Dissenters coming one day accidentally into my mind, drew me by degrees into a stricter and more thorough inquiry into the question about Justification. The Scripture was direct and plain, that it was faith that justified; the next question then was, What faith that was that justified? What it was which, if a man believed, it should be 'imputed to him for righteousness'? To find out this, I thought the right way was to search the Scriptures, and thereupon betook myself seriously to the reading of the New Testament only to that purpose; what that produced, you and the world have seen." Your Lordships see, therefore, that the question not only was not an unknown question, but that this question, which was then rife among Dissenters, was actually the main cause that led Locke to search the Scriptures, with the view of seeing what the faith was that justified, and which finally gave rise to that treatise on the "Reasonableness of Christianity."

Now, however imperfectly I may have discharged this part of my duty, I submit to your Lordships, by way of recapitulation, that, even supposing that your Lordships are satisfied that Lady Hewley was a Trinitarian, and supposing your Lordships should be of opinion that she entertained those other doctrines to which I have adverted,—it still remains for your Lordships to decide this important question, whether, having regard, first, to the mode in which it is competent to Courts of Justice to construe deeds, and, secondly, to the state of society and of religious dissent at the time when those deeds were executed, you can travel out of the plain, unequivocal words contained in this instrument, under the supposed notion that Lady Hewley, contrary to that which was the tessary, as it is stated in another place, of her faith, the non-imposition of any subscription whatever, of any test of faith,—whether you can, although you find nothing imposing any such test in the words of the deed, and find nothing whatever in the state of society at the time when the deed was executed, to lead to the inference that she meant more than is to be found in the words of those deeds,—whether you can say, We will infer of necessity that she meant nobody to participate in her charity, that did not entertain opinions conformable with her own? That is the important question which is to be decided, and which, in whatever way it be decided, your Lordships will feel is one of as great importance as ever has been submitted to this House.

It now remains for me to make some observations upon the Decree which has been pronounced. If the view which I have taken of the subject be a correct view, then it would follow that there should have been no Decree pronounced at all,—that the Information should have been dismissed. If that view were adopted by your Lordships, any observations as to whether the Decree, if any Decree was to be made, be a correct Decree, would of course be irrelevant. But, whatever confidence I may have persuaded myself to feel in the view that I have already submitted, I cannot feel that I should be doing my duty to those whom I represent, if I did not now proceed to shew to your Lordships, that even if a Decree was to have been pronounced, this Decree was a Decree that never can stand. This Decree is a Decree which will leave the parties nearly as much at sea as before this Information was filed.

My learned friend, the Attorney-General, called your Lordships' attention to this distinction between Informations for charities and ordinary suits

between A and B; that whereas in the latter, parties may propound whatever subjects they please to litigate upon, and it is upon that alone the Court adjudicates, the course is very different when charities are concerned. When a charity is concerned, the Court must give such directions as shall enable the charity to be duly executed. Now, suppose your Lordships were of opinion, with the Courts below, that some directions are necessary in this charity for its administration,—I beg leave to call your Lordships' attention to what the directions here given are, and to ask how they are to be carried into effect?—"This Court doth declare that ministers or preachers of what is commonly called Unitarian doctrines, and their widows, and members of their congregations, and that persons of what is commonly called Unitarian belief and doctrine, are not fit objects of, and are not entitled to partake of, the charities of Dame Sarah Hewley."—"Ministers or preachers of what is commonly called Unitarian belief and doctrine"! I never saw a Decree so worded. What parties are to act upon what is *commonly called?* Commonly called! By whom? Is the same thing commonly called Unitarian belief by A, which is called Unitarian belief by B? Have your Lordships judicial knowledge upon that subject? The only knowledge that we have, is to be collected from what is said in this case by the parties.

Now let us see what Mr. Wellbeloved, who is interrogated so closely upon this subject, says: "This defendant saith that there is a great diversity of opinion amongst persons professing Unitarian opinions, and there is amongst them no settled and admitted standard of belief, save the Holy Scriptures. However, this defendant saith that they all, to the best of this defendant's belief, believe in the divinity of the mission and office of the Lord Jesus Christ, and that the Holy Scriptures of the Old and New Testament contain the revealed will of God." And afterwards, at page 52 of the Appellants' Appendix, he says,—"There are very few persons who agree in the definition of the term 'Unitarian,' and that sects maintaining very different religious opinions, claim it for themselves; and this defendant saith that he doth not agree in some very important points of doctrine with any sect that either takes to itself, or receives from others, the appellation of 'Unitarians.'"

And yet, without any inquiry as to what sense it has been used in, this Decree only says negatively, that persons entertaining Unitarian belief and doctrine are not fit objects of Lady Hewley's charity. That, it is true, is what is prayed, and I presume it is meant for this reason, because they are not, as has been stated by some persons, to be considered as Christians. Now if they do not believe in the Holy Scriptures, that would be a test. You might find out who were persons professing Unitarian belief or doctrine, if that were the test, but that is not the test. That is not so. The Information itself does not say that they are not Christians. On the contrary, over and over again, it speaks of them as a class of Christians. It charges, "That the belief and doctrines of the class or sect or denomination of Christians commonly called Unitarians, are set forth in several of the books distributed by said British and Foreign Unitarian Association."

My Lords, is the test then to be whether they are parties that use those books which are circulated by what is called the Unitarian Association? I presume that was meant to be a test; and I so presume from the great importance that was attached to the introduction of that which is called the Improved Version. Now, upon that subject, I must take the liberty of calling your Lordships' attention to what the evidence is. This is a most important part of the case, and one which it is extremely important to bring to your Lordships' attention with reference to what Decree is to be made. Your Lordships will find in the Respondents' Case, p. 103, there was given in evidence an extract from the Sixth Report of the British and Foreign Unitarian Association, with the proceedings of the Annual General Meeting,

held in Finsbury Chapel, London, on the 25th May, 1821. There are the Rules of the Association. There are several which are immaterial. The object is the promotion of Unitarian Worship in Great Britain, by assisting poor congregations, and sending out or giving assistance to Missionary Preachers.

Now I beg your Lordships' attention to this,—"the publication and distribution of books and tracts, controversial and practical, principally in a cheap and popular form." Then amongst the members and subscribers is Samuel Shore, of Sheffield, one of the Grand Trustees, and Mr. Kenrick, and Mr. Wellbeloved, and Mr. Hincks, who are three of the Trustees of the Hospital. And then there is "gratuitous books distributed by the British and Foreign Unitarian Association." One of the books so printed is the Improved Version. It was never proved as an exhibit; but I am not disposed to make a question about that, because, undoubtedly, what is called the New and Improved Version, is one of the controversial books printed under the sanction of the Unitarian Association; just as Archbishop Newcome's proposed New Translation of the New Testament has been, or at least might have been, printed at the University of Oxford; just as Sale's Koran has been printed at Cambridge; just as a learned and reverend Prelate on your Lordships' Bench might with great propriety have subscribed to the publication of Sale's Koran. But it is to me a proposition the most startling and the most staggering that ever I heard propounded, that because you have subscribed to a Society, one object of which is to print books of controversial divinity, (one of those books of controversial divinity being perhaps something of which you do not approve as being correct,) that, therefore, you are to be supposed to authorize and approve every thing that is to be found in that volume! This is the most startling proposition that ever was uttered at your Lordships' bar: there is not a particle of evidence that this Improved Version was ever adopted by Unitarians—not a particle of evidence that this Improved Version *is* adopted by Unitarians. It is called the Improved Version; that is the title that the parties who prepared it have chosen to give to it. I am told here, that which I have a right to state, that it is not received by any congregation of Unitarian Dissenters, that it is never regarded by them but as a book of controversial divinity, in which there are a great many alterations, some that have much weight and some that have little weight, and of which a person may judge for himself; but it is no more the Bible of the Unitarians, than any of the different translations which have occasionally been made of different parts of Scripture, are the Bible of members of the Established Church. And yet this is to be, so far as I can make out, the test that is to be applied when you are to look at who are to come under this class of Unitarian Dissenters. My Lords, I do not understand how the Master or the Trustees are ever to determine whether a person is a person entertaining what is commonly called Unitarian belief or doctrine. One of your Lordships put a question yesterday which might also serve as a test; does the party reject or receive the first part of the Gospel of Luke? I only answer, personally, I do not know; but I take it either way—he does or he does not. What is to be the consequence of not taking it? He says, I receive the Scriptures as the revealed Word of God——

Lord WYNFORD.—Does he receive the Scriptures, unless he receives the whole?

Mr. SOLICITOR-GENERAL.—I believe so; there is no evidence to the contrary.

Lord WYNFORD.—I did not make myself heard. Is he to be considered as receiving the Scriptures, unless he receives the whole Scriptures?

Mr. SOLICITOR-GENERAL.—I hope so, indeed; because, if not, there is a formidable degree of heterodoxy upon the Bishops' bench. If I were driven to this, whether I receive the whole, I as much recede from the whole

if I take out the dot of an *i*, as if I take out a chapter. If that is not so, I do not know how much I understand by the whole. I can understand, for all practical purposes, the whole, giving me a latitude.

Lord WYNFORD.—There is a very important doctrine which depends mainly upon the first chapter of St. Luke, namely, the miraculous conception of our Lord.

Mr. SOLICITOR-GENERAL.—The principal answer that I wish to give is, that I believe they do receive the whole. I never heard the contrary; there is no evidence upon the subject; but that, I submit, should have been matter of inquiry in the Decree; I believe they receive the whole. Whether every Trinitarian believes every passage to be genuine, or whether they believe some parts to be spurious, I neither know nor care. This I know, there can hardly be a more important doctrine than in the verse which I am about to read:—"For there are three that bear record in heaven, the Father, the Word and the Holy Ghost, and these three are one." Now your Lordships are well aware that it is a matter of the strongest controversy whether this is not an interpolation. A person says, I receive these Scriptures as the revealed Word of God; if you drive me to that, that this must mean every word in it, the party who asserts the spuriousness of this passage is as heterodox as one who asserts the spuriousness of ten verses.

Lord WYNFORD.—There are many editions of the Bible in which that verse does not occur.

Mr. SOLICITOR-GENERAL.—Yes, my Lord; but the Scriptures are translated at a particular time, and we mean by the Scriptures, our received version of the Scriptures. Now the party who rejects that verse in the Epistle of St. John, is as much not a believer in the whole Scripture, as the person who rejects a larger part of it. But the answer I give is, I believe the Unitarians receive the whole Scripture; but there may be among Unitarians, as Mr. Wellbeloved says, a variety or difference of opinion; some may not think that one particular chapter is a genuine chapter, others may agree with the whole of it; but to use that book as any test seems to me to be launching into difficulties with which we are quite unable to combat.

My Lords, since I have come here to day there has been put into my hands a newspaper, in which some Unitarians have repudiated this Improved Version. In a public dispute between the Unitarians and Trinitarians, the Trinitarians imputed it as a crime to the Unitarians, that they did not receive the Scripture in its authentic form, as recognized by the law. They repudiated that altogether; they denied that there was anything of the sort. I do not say that this is any good evidence at your Lordships' bar, but there is no evidence on the other side.

Lord WYNFORD.—What is that?

Mr. SOLICITOR-GENERAL.—This is a newspaper of the other day. My learned friend will be so good as to read it; he can find the passage more easily.

Mr. BOOTH.—"Will you allow us to correct a mistake which appears in your enumeration of the three topics most fit for discussion? We do not, as Unitarians, deny the genuineness, or alter the translation, of any part of the authorized version of the Holy Scriptures. The Unitarians have neither canon nor version of their own, different from those recognized by other churches. As biblical critics, we do indeed, neither more nor less than others, exercise the best judgment we can on texts of doubtful authority (as did Bishop Marsh in rejecting the 'heavenly witnesses,' 1 John v. 7, 8), and on the accuracy of translations (as did Archbishop Newcome, when he published his version of the New Testament); but no opinions on these matters belong to us *as a class*, or are needful to the defence of our theology. If you allude to the Improved Version, we would state, that it contains the private criticism of one or two individuals; that it has never been used in our churches, nor even much referred to in our studies, and is utterly devoid of all authority with us; and

that, for ourselves, we greatly prefer, for general fidelity as well as beauty, the authorized translation, which we always employ."

Mr. SOLICITOR-GENERAL.—I certainly remember to have heard it stated in the strongest way, when this matter was argued before, that it was a matter of the greatest astonishment to the parties, when it was imputed to them that they used this, which is called the Improved Version, instead of the ordinary version. I remember it was then stated at the bar, *ore tenus*, that Unitarians always used the same Scriptures that members of the Church of England and other Christians use; and that this Improved Version was not so called because *they* thought it improved, but that that was the name the parties who prepared it chose to give to it; and very few persons thought that much was to be deduced from it.

Now your Lordships observe that the course of this Decree is merely to state that Unitarians, or rather persons of what is commonly called Unitarian belief and doctrine, are not fit objects, and there it stops. My Lords, it is to be borne in mind, that there is a very large fund in Court, which at the time of the Decree was upwards of 10,000*l.*, and now I am told it is 30,000*l.*; it would necessarily be so, for it has been rolling on for many years. What is done with that? It is ordered, "That it be referred to the Master to approve of a proper scheme for the application of the residue of the funds of the said charity." What course is the Master to take? He is told that persons holding what is commonly called Unitarian belief and doctrine are not fit objects, —and there it stops. My Lords, this is not a mere question between the Relators and the Defendants, the Trustees. The Trustees have really no interest. The parties really interested are the individuals throughout the whole kingdom who may be objects of this trust. Well, is the Court to leave it all at sea, and say, We find it very difficult, and all we say is, that Unitarians shall not have it, and you, the Master, must find out as well as you can who is to have it? Is that the way, my Lords, in which the Courts are in the habit of dealing with Decrees? That is not the view that Lord Eldon adopted in the case which is supposed so much to favour my learned friends,—I mean the case of the Attorney-General *v.* Pearson; he did not think that because there was difficulty in it, he was to leave it to chance, and let anybody that could catch it. What he did is not analogous in the present case, but still it is analogous to my present argument,—that the Court is to exhaust the subject, and see what is to be done, and not merely what is not to be done.

My Lords, following out that principle, which your Lordships must do, if you come to the conclusion that Lady Hewley's opinion, and conformity to Lady Hewley's opinion, is to be a test of our right to receive the fund, you must direct a reference to the Master, to inquire what were the tenets of Lady Hewley, and what were the tenets and doctrines of the persons whom she intended to benefit by her bounty. Without that it is utterly impossible that this fund-trust can ever be duly administered; not only it is impossible in time to come that the Trustees can duly administer it, but that a proper scheme should be proposed for the due administration of that fund which is now in Court. And that, my Lords, brings me to this observation, which I cannot but think is entitled to the very greatest weight;—what means have your Lordships, or rather what means have the Court of Chancery of ascertaining whether parties do or do not entertain particular belief? It is difficult enough with regard to preaching. A Right Reverend Prelate, not now in the House, put this question to me early in the course of my argument, "Who is to decide whether what is preached is or is not the Gospel?" I felt the full weight of that observation; I felt that it led me to a very important argument, to show that these are trusts which a Court must be very reluctant to execute, if it is not entitled altogether to repudiate them. But if that be difficult, is it not increased in a ten-fold degree, when you are not merely to ascertain whether what a party is preaching is the Gospel of Christ, but whether certain old women and certain widows, objects of the charity, between two and three

hundred in number, do or do not entertain opinions in conformity to the opinions that were entertained by Lady Hewley in the year 1704? I say, to attempt a test is attempting something that is perfectly Herculean! No Court has the machinery for carrying it into effect. How are you to ascertain what a person's religious belief is? How are you to ascertain whether a person is the object of this charity,—whether she believes in Original Sin, as it was understood in the time of Lady Hewley? What is the machinery to be in set in motion? Who is to inquire? Is it to be an inquiry made *toties quoties*? You do not see half the difficulties at present; the question at present is only as to the doctrine of Original Sin and the doctrine of the Trinity. Suppose, after the Decree is carried into effect and the trust distributed, the Trustees should have a new Information filed against them, stating that the fund is distributed to persons who do not believe in Election and Predestination, in the sense understood by Lady Hewley? If this Decree is to stand, you cannot refuse an inquiry upon that point. These may not be considered such important points as the point of the doctrine of the Trinity; but I repeat what I stated in the outset, that your Lordships, as a Court of Justice, know no difference but the one between error and truth; and the moment you have got into dissent, you have got into error, and you have not the machinery to inquire into more or less of error; and if you mean to say that no parties shall be the recipients of the charity who do not entertain the particular errors which Lady Hewley entertained, there is no end of that till you have exhausted every possible subject of belief upon those abstruse questions. Lady Hewley has said nothing of the sort; she has left it clearly to go to "godly preachers of Christ's holy Gospel;" and if you allow her opinions to be entered into, you will be creating difficulties, the end of which you will be quite unable to fathom.

On the subject, my Lord, of the removal of the Trustees;—why are they to be removed? They are to be removed, if they are to be removed, because they do not entertain opinions in conformity to those of Lady Hewley. That is a perfectly novel doctrine; that doctrine has been in some degree considered of late in the Court of Chancery. By the Municipal Reform Act, there was cast upon the Lord-Chancellor the duty of appointing Trustees in the place of all the Trustees of all the trusts that had been held by old Corporations; and when the matter was entirely open to the Lord-Chancellor, and he had an unlimited field to choose out of, he laid down this very reasonable rule: he said, I am to select them all *de novo*, and having to select Trustees *de novo*, there being nothing to guide me, I, not being like Lady Hewley, a person to select from my own pleasure or feelings those whom I choose to select, the rule I shall lay down is this,—that in ordinary charities which have nothing connected with religion in them, I will leave it to the parties to select whom they please, and they shall be adopted: but if it be a charity relating to the Church of England, then I will take care that for this charity Church-of-England Trustees only shall be selected.—If, then, there is any law of this sort, I never heard of such; and I am sure your Lordships never heard of a Bill filed to remove a Trustee because he was a Dissenter. No such thing was ever heard of. It may be very right where a public functionary, like the Lord-Chancellor, is selecting Trustees *de novo*, that he should have regard to that, as a circumstance which would influence his mind; but it does not follow because there may be some difference of opinion, that therefore they are to be removed, or are not fit persons to be elected.

Now, I call your Lordship's attention to what came before the Court of Chancery, before your Lordship, in the case of the Norwich Charities. It is reported in 2nd Mylne and Craig, page 275. There, Trustees had been appointed; and one of the trusts was a trust for education; and after the constitution of the trust, some time afterwards, some person had given a small sum of 13*s.* 4*d.*,—it must have been in remote times, as the sum ex-

plained,—to be paid to a minister of the Church of England to catechize the children. It was endeavoured to be argued before your Lordship, that this gift made the charity a Church-of-England charity, within the meaning of the rule that had been laid down by the Lord-Chancellor. But it was held that that was not so,—that the trust was created for the education of children; and there was something that showed (I need not go into the detail) that it was not in its origin confined to the Church of England; but afterwards somebody gave 13*s.* 4*d.* to be paid annually to a minister of the Church of England to catechize the children:—the Lord-Chancellor says,—"What are to be considered Church purposes? When I look to this foundation, I can find nothing alluding to a Church purpose; and I cannot hold, because I may have reason to suppose that Thomas Anguish," (that was the Founder,) "when he made his will in the year 1617, was a member of the Church of England, that therefore he intended that the only objects of his charities should be persons who belonged to the Church of England. He could easily have declared such an intention if he entertained it." My Lord, I have never heard that law questioned; that was what was laid down in the Court of Chancery; and instead of Thomas Anguish, let me put Lady Hewley; and instead of Church purposes, let me put purposes in conformity with the opinions of Lady Hewley—and I have an exact authority upon the point. Your Lordship would not hear of such a matter as this,—that because a party created a charity, not limited to the Church of England, that therefore it was supposed that the objects of this charity were to be Church; and your Lordship adds this,—it is the same proposition as I am now contending for,—"it is quite impossible that any superadded gift can alter the original purpose of the foundation." That is not inapplicable to the present case, because that shows that the superadded gift of 1707 cannot vary the original gift of 1704. Therefore, I say, my Lord, with regard to the removal of Trustees, the mere circumstance that they do not entertain opinions in conformity with Lady Hewley's, proves nothing at all.

But what are the opinions in consequence of which these gentlemen are removed? It might possibly have been open to argument, that if they had been great controversial theologians, arguing publicly contrary to the opinions of the Foundress of this charity, they might not have been proper parties to administer it; but Mr. Heywood is a member of the Presbyterian congregation at Wakefield; he says, "I have no hostility to the Church; I very often go there, and take the Sacrament there; and I was educated at Cambridge. My tutor was Dr. Paley; I have often conversed with him on the subject of theology, and as far as I could ascertain, we very much agreed with each other. It is true, I have frequented the same place of religious worship as my ancestors frequented before me, but I have no hostility to the Church. I am a gentleman of independent property, respected by my neighbours, as far as I can judge, and have always endeavoured to administer this according to what I thought the proper course." This gentleman is to be removed, because it is to be supposed that his opinions do not coincide with those of Lady Hewley in 1704: his son, in the same way, and also Mr. Walker and Mr. Gaskell. But I merely remark the extraordinary position in which Mr. Wood was placed. He was appointed a Trustee after the Information was filed; he might have taken an objection in point of fact, and have stopped the case; but he did not choose to do that; and his answer is, he has never acted, and he submits to act as the Court directs. Then he is removed, because he is not a proper person. Surely this opens questions of the greatest difficulty and the greatest nicety. Is nobody to be a Trustee that does not entertain opinions in all respects conforming to Lady Hewley's? And if not in all respects, what are to be the points in which it is to be competent to differ from her? Absolute election, predestination, fixed fate, free-will, foreknowledge,—what are to be the points of belief that are not material, not for the recipients, but for the Trustees? I can only say

his opens a source of inquiry as to the fitness of Trustees for the
ecution of trusts, and appointing new Trustees, that may give rise to
fruitful litigation in Courts of Equity. I never heard the doctrine
propounded, that a conformity of belief with the party who is the
er of the trust, is an essential ingredient to the due appointment of a
e: it is for your Lordships to say whether you will sanction that
ne.

Lords, I have quoted a passage, whereby it appears that the alms-
n frequent places belonging to the Church of England. Those that
t too infirm to go to any public place of worship, do not frequent St.
ar-Gate Chapel; two of them have occasionally gone there, but the
frequent the Established Church. That is quite consistent with Lady
ey's deed. And actually one of the Trustees of the almshouses is re-
l from being a Trustee, because he is a member of the Church of Eng-
It is impossible that that part of the Decree can stand. That is a
of comparatively little importance; but it is a matter not only in itself,
r precedent, that deserves very serious consideration.

Lords, the only remaining point to which I wish to call your Lord-
attention, is the subject of costs. And having troubled your Lordships
g on the vital and more important points, I do not like to sink down to
ter which, though I must own I regarded as a serious infliction upon
rustees, I yet thought ought to be treated as a matter of comparative
ificance. When the matter was heard before the Vice-Chancellor, his
ur not only gave the Trustees their costs, but all costs, charges and ex-
s, which they in any way had incurred incidental to the management of
rust,—words as large as it was possible to introduce,—which clearly
ated on the part of his Honour, that although he removed them and re-
d the management, yet that he thought no blame was to be imputed to
. If he thought that they had wilfully misconducted themselves, it
l have been his duty, either to make them pay the costs of the Informa-
or not give them the costs, or, at all events, not those comprehensive
which he did give.

e matter was then considered by the Trustees, whether they should
esce, or whether it was their duty to appeal. Now, my Lords, in con-
ng whether it was their duty to appeal, my learned friend, the Attorney-
ral, has already called your Lordships' attention to the importance of
ubject, and therefore the necessity of bringing the matter before a higher
al; but give me leave, with very great respect to his Honour the Vice-
cellor, to call your Lordships' attention to another consideration: what-
may be the event of this suit, whether the Judgment is affirmed *in toto*,
odified, or the Information dismissed, is there one individual in your
ships' House, or out of it, who will say that he goes along with his
ur the Vice-Chancellor upon the grounds upon which he decided?
e were the only grounds with which we were conversant. The matter
brought before the Vice-Chancellor, and the Vice-Chancellor gave his
ment, almost exclusively upon the notion that this New Version of the
Testament was endeavoured to be palmed by Unitarians as a disguised
upon their followers. His Honour proceeded, in the first place, to
what were the opinions of Lady Hewley,—quoting the Will, to show
elieved in the Trinity and Bowles's Catechism. And then he proceeds
—"Now the book mentioned in the Catalogue of Books at the end of
Sixth Report of the Unitarian Society, which was the book called an
oved Version of the New Testament, affords a strong inference that the
ns who would assist in the publication of it," (that referred to one of
rand Trustees and three of the Sub-Trustees,) "cannot come under the
iption of poor and godly preachers of Christ's holy Gospel." And then
es on to show, with not quite, I think, the same critical acumen that
Honour ordinarily exhibits in matters of this sort, the extreme errors of

some of the translations; and, particularly, he points out the translation of the words σημερον γεγεννηκα σε, which, instead of being translated, as in the ordinary translation, "This day I have begotten thee," are translated, "This day I have adopted thee;"—his Honour not being aware, probably, that that is the translation adopted at Oxford and in Schrevelius's Greek Lexicon. It may be right or wrong, but that was the ground on which his Honour mainly relied that this Improved Version of the New Testament was a sort of fraudulent attempt to palm upon the public, under the name of an Improved Version, that which was in truth only a creed in disguise.

My Lords, on those grounds, and those grounds only, his Honour determined that parties were not fit objects of Lady Hewley's charity, who entertained what is commonly called Unitarian belief and doctrine. The Trustees did not feel that they would have done their duty to the numerous class of persons who looked up to them for protection, (for it was impossible for any one of the recipients to file a Bill,) if they had not brought this before the Lord Chancellor; and then, after that matter was heard for four days by Lord Brougham, (all were heard except the Reply,) with the assistance of two of my Lords the Judges, Lord Brougham quitting office, the Relators refused to let the matter proceed and to be adjudicated by Lord Brougham; and it then came and was heard before Lord Lyndhurst; and there remained to be heard before Lord Lyndhurst, the last counsel for the Defendants and the Reply. There had been two days heard, and the Defendants had been heard by one or perhaps two counsel, but there remained further counsel to be heard for the Defendants and the Reply.

Mr. KNIGHT BRUCE.—You and Mr. Booth were fully heard. Sir Charles Wetherell, Mr. Duckworth and Mr. Cooper remained to be heard.

Mr. SOLICITOR-GENERAL.—Sir Charles Wetherell, Mr. Duckworth and Mr. Cooper remaining to be heard, the Trustees did not feel that they would be justified in taking any course which would lead to expense; they were willing to leave it to Lord Lyndhurst; they did so, and Lord Lyndhurst affirmed the Vice-Chancellor's Decree, and made the Trustees pay their own costs of hearing before him, which of course included the costs before Lord Brougham. Now we could not have appealed upon the subject of costs, if that had been the only matter; but there being a grave matter in the principle of the Decree, it is not immaterial that I should call your Lordships' attention to that part of the Decree; for I do trust that your Lordships will see that it was a hard infliction upon the Trustees, to be made to pay the cost of these proceedings.

I have endeavoured, I fear imperfectly, but I am sure from the nature of the subject your Lordships will pardon me, to bring the case under your consideration. I have abstained from going into quotations containing a large mass of information with which I was prepared; your Lordships will have an opportunity of reading the volume in which that is printed. I now, therefore, leave the case in the hands of your Lordships.

LORD-CHANCELLOR.—We will go on with this to-morrow morning.

WEDNESDAY, 15th MAY, THIRD DAY.

Mr. KNIGHT BRUCE.—My Lords, I have the honour of appearing before you as Counsel for Her Majesty's Attorney-General, the Respondent, the only Respondent upon this Appeal. I appear instructed by those persons who, under the name of Relators, are the instruments of the Attorney-General for the purpose of prosecuting the Suit which that functionary has considered proper to be instituted, and for the purpose, also, of being responsible to the Defendants in costs in the event of the Suit being considered not one proper to be instituted. My Lords, to those the Attorney-General has thought fit to entrust, and in their hands has thought fit to leave the conduct of the Suit. As your Lordships, or many of you, are well aware, it was competent to the Attorney-General at any time in his official capacity to intervene to take the conduct of the Suit from those with whom he had originally entrusted it, to assume that conduct himself; it is his own Suit. That public functionary has not thought fit to do so; and in his official capacity is represented on the present occasion by my learned friends who are with me, Mr. Kindersley, Mr. Romilly, and by myself, and by no other person. My learned friends, the Crown Lawyers, are here on the part of the Defendants simply in their private capacity of eminent counsel. The official sentiments of Her Majesty's Attorney-General on behalf of the public your Lordships can only hear from the Counsel for the Respondents; by those Counsel Her Majesty's Attorney-General in his official capacity states to your Lordships that he is satisfied with the Decree which has been made, and will proceed by those Counsel to lay before your Lordships those reasons which, in the opinion of those who conduct the Case, are sufficient to support the Judgment that has been pronounced.

My Lords, in considering the Case it has appeared to me more convenient, and I trust it will be equally convenient to your Lordships, if I somewhat change the course in which the different parts of the subject have been considered by the learned Counsel for the Appellants. I propose, my Lords, to reserve for the latter part of what I shall have the honour to address to you, the consideration of the great question in the Cause, the manner in which the magnificent charity under consideration ought to be applied, and I shall consider in the first place, instead of placing it in the second, as my learned friends the Counsel for the Appellants have done, those objections which are made to the Decree consistently with the theory of the Judgment being right upon that main question.

Following that order then, my Lords, I shall, for the purpose of the remarks I have to submit to your Lordships, in the first place assume that it is correct in principle to hold that the benefits of this Charity were intended, and ought to be applied, in favour of those, and of those only, who do not deny the Godhead of our Saviour. I shall in the latter place endeavour to prove the correctness of that principle; but for the purpose of the remarks that I am now going to offer, I will beg of your Lordships to allow me to assume that, and to go along with me in assuming it. I assume, then, that it is correct to say, that the benefits of this Charity were intended for, and ought to be confined to those only who profess to believe in the Godhead of our Saviour; and the question then is, Whether, upon that basis, the present Decree is right or wrong?

My Lords, having thus stated the order in which I propose to consider the subject, I will, with your Lordships' permission, before going into the argument——

Mr. SOLICITOR-GENERAL.—My Lords, there was a case I was to have referred your Lordships to yesterday, which I omitted to do, which my learned friend is so good as to allow me to do. It is the case of The Attorney-General *v.* The Coopers' Company, reported in 19 Vesey. The passage to which I refer is in page 192. I refer to it merely for the purpose of reading

this part of the Judgment, with regard to that part of the prayer of this Information which relates to the removal of the Master: "It is not the habit of this Court to remove where there has been any misunderstanding as to the duty; but when that duty is prescribed, the Master must determine either to hold the situation, doing the duty, or to discharge himself." I meant to quote that merely for the purpose of showing that, though these parties may not have administered the trust in the mode in which it ought to be administered, if that has arisen from the misunderstanding of the party, the course is for the Court to point out the duty, and to leave to the Trustee to discharge it if he thinks fit.

Mr. KNIGHT BRUCE.—My Lords, the Decree is printed at length in the Appendix to the Appellants' Case, at page 137. The declaration in it which is complained of, even upon the assumption upon which I am now speaking, is this: "This Court doth declare that Ministers or Preachers of what is commonly called Unitarian belief and doctrine, and their widows and members of their congregations, and that persons of what is commonly called Unitarian belief and doctrine, are not fit objects of, and are not intitled to partake of the Charities of Dame Sarah Hewley in the pleadings of this Cause mentioned." It is said that the terms are vague and uncertain, that the Decree is confined to one declaration only, and does not go on to declare in whose favour the Charity was intended. Now, my Lords, it is true as far as we can collect from the evidence in this Case, that there are upon some minor points shades of difference among Unitarians. There may be some Unitarians who believe in the doctrine of Original Sin, there may be some Unitarians who do not. There may be Unitarians who, under such meaning as they may affix to the word, believe in the Atonement. There may be various shades of doctrinal difference between classes of Unitarians, but there is one grand and cardinal point upon which all agree, and without which Unitarianism cannot subist,—it is the denial of the Godhead of our Saviour. A man who does not deny the Godhead of our Saviour is not an Unitarian; a man who does is an Unitarian, whatever his opinions may be as to Original Sin, whatever shades of difference of opinion between him and others there may be on other and minor points. That opinion belongs to all; it is that without which an Unitarian cannot be; and it is that by which alone it is necessary for the present purpose to distinguish him. How, therefore, can there be any difference of opinion as to what is meant by the term Unitarian? That definition suffices for every purpose of the Cause, and for every purpose with reference to which you would wish to impart a definite idea. Different classes of Unitarians may hold different doctrines upon those points, but still they are all Unitarians. Protestants hold different opinions upon different points, and some of great moment and consequence, but they are nevertheless Protestants. The Calvinist is a Protestant, the Lutheran is a Protestant, the Anabaptist is a Protestant; because they all agree in some great leading points which are necessarily common to all and are involved in the description. So with regard to the term Unitarians, it is not an expression in which there can be any ambiguity. Does any man doubt, has any man professed to doubt what is meant by a person commonly called Unitarian? The Attorney-General did at last in the Cause obtain from Mr. Wellbeloved a description of their distinguishing characteristic; he obtained it with greater facility from others in the Cause, and there is evidence in the Cause to the same effect; and I may here mention, once for all, an observation that is very material to many parts of this Case, namely, that the evidence in this Cause is all on one side. The Defendants having their attention called by the pleadings minutely and pointedly to the issues in the Cause, entered into no evidence whatever, and upon the evidence as it exists in the Case, the meaning of the term, however superfluous it was to do so, has been clearly and in detail explained. Its meaning is admitted, and is not suggested to be matter of reasonable question.

the expression, "commonly called Unitarians," has this propriety
, that the term Unitarian by itself has a species of incorrectness, cor-
v its conventionary use and application. That observation is made
Baron Alderson in the opinion which his Lordship delivered when
g Lord Lyndhurst in this Case. It is at page 10 of the printed copy
have of the pamphlet called, "The Judgment of Lord Lyndhurst, to
s prefixed the joint Opinion of Mr. Baron Alderson and Mr. Justice
n," printed for Ball, Paternoster Row, 1836. Mr. Baron Alderson
Now it is contended on behalf of the Relators to the present Suit,
s Charity is to be confined to Protestant Dissenters entertaining a
the Divinity of our Lord Jesus Christ, in the Atonement, and in the
of Original Sin; in fact, those who are commonly called Orthodox
ers, in order to distinguish them from others who entertain different
s as to these important matters, and who are called in common par-
hough undoubtedly by no very accurate description in that respect),
an Dissenters. In more correct language, perhaps, they should be
'Believers in the Unity of the Godhead without any distinction of
therein,' for we perceive that those who differ with them in this re-
ually believe in the Unity of the Godhead, although they think (and
m what they consider plain texts of Scripture), that such mysterious
not inconsistent with the equally mysterious distinction of persons
" One can hardly therefore conceive any expression with more
correctness and precision adapted to express the idea of the Judges
Decree this is; I mean the Vice-Chancellor, in the first instance,
by Lord Lyndhurst, with the concurrence of Mr. Baron Alderson
Justice Patteson. The term Unitarian is a term, which by common
, by universal agreement, has received a fixed meaning in itself. It
no distinction between the different classes who are disputant on the
. In a certain sense all are Unitarians, because all believe in the
the Godhead; but the Decree, adopting the language universally
od by mankind, language which has received a conventional meaning
ich no man living affects to doubt, uses this most accurate expression,
is commonly called Unitarian belief and doctrine." No argument
urged to attribute incorrectness to it for the purpose of founding the
on of incorrectness upon that language. The only remark that I have
ded at all bearing upon the subject is that with which I have already
amely, the existence of differences among Unitarians; but they still
Unitarians, however they may differ upon this point. The person
ly called an Unitarian is he who, professing to believe in the Divine
of our Saviour, denies his Godhead; and no man misunderstands it;
would venture to say that he misunderstands it; that would involve
tation upon his understanding, and an ignorance of the English lan-
My Lords, I apprehend therefore that not only is the description in
ee sufficient, but it is probably the only description that could have
h propriety used.

ext words are "belief and doctrine," not as it was supposed for a mo-
a part of the argument, "belief *or* doctrine," but "belief *and*
," belief evinced by those overt acts which afford the only human
f testing belief. Upon what belief and doctrine are with reference to
subjects, no man also has affected to doubt; no man can dive into the
of a man's heart for the purpose of ascertaining what is his real be-
you must test it by what he says and by what he does; they are the
lences of his belief which, humanly speaking, can be attained, and by
dences and those alone it must be tried.

ords, these seem to me, speaking with great humility, self-evident pro-
, common-place observations, remarks which lie upon the surface; but
my fault that I trouble your Lordships with them. Observations have
de by counsel of great eminence, everything that falls from whom I am

bound to treat with respect, and feel a sincere respect for, and I have been induced therefore to trouble your Lordships with these few remarks upon those observations that have been made. My Lords, I will leave that part of the argument there, and will assume that the words "Unitarian belief and doctrine" are plain, intelligible, sufficient expressions.

My Lords, it is then said that the Decree ought to have gone further, that it ought not only to have contained negative but affirmative clauses in this respect, and that it is erroneous because defective, and it is said, and for certain purposes with truth, that upon an information a court of equity is not bound by the same strict rules of pleading which exist between adverse parties, parties adverse in the ordinary sense of the term, in the case of what is called a bill, and that the court will exercise a greater latitude in giving relief upon an information than upon a bill. That is so, my Lords, when the court is asked to do it, and the case requires it; but was it ever heard, that because a court might go further than it has gone, it is erroneous because it did not do so, when neither of the parties to the record wished or desired it? Is a court of justice to decide points or to raise points which the parties litigant before it do not raise and do not wish decided? It would be an active interference on the part of a court of justice in the affairs and concerns of those who are brought before it which a court of justice is not warranted in exercising upon a civil question.

My Lords, the Attorney-General of the Crown had thought fit to entrust the conduct of this Cause on behalf of the Crown to certain individuals, with whom the conduct of the Cause rested by the permission and election of the Crown's Attorney-General. The Attorney-General thought fit to ask only for common relief; it was competent to the Defendants to ask relief, if they thought fit, different, more extended—less extended; but that was done by neither party. What was the Court to do? Was the Court to go out of its way on a civil question to decide a point not raised, not upon the record, not in issue, upon which its opinion was not wished? A strange function for a court of justice in a civil suit to assume! The cases to which my learned friend the Attorney-General, in his argument as Counsel for the Defendants, alluded, are those in which one of the parties to the suit is asking relief not nominated in the record. Then the Court says, "This is a Charity Case, and I will give you such relief as is proper for the Case upon the facts stated before me, although not prayed for or asked at the bar:" to that length, and to that length only, do the authorities go, as some of your Lordships at least familiarly know.

Now, my Lords, upon the present record there is a single question of difficulty raised, Whether the parties, and there are parties to an information as as well as to every other suit, whether they alone must be regarded for the purposes of the suit, or are but the organ of the public interest? And the public interest can be looked to only through that organ, by means of that organ,—the parties to the suit. There is but one question for decision. The origin of the Suit was an application which was contended to be a misapplication of the funds of the Charity for Unitarian purposes; that was the one complaint upon which the Information was grounded; it was the one contention between the parties; there was nothing else that the parties on the one side or the other brought before the Court to decide or thought fit to ask the opinion of the Court upon; there was no other difficulty. My Lords, rightly or wrongly in the abstract—with that we have nothing to do,—rightly or wrongly in the abstract, those who prosecuted the Cause and those who defended it agreed in the proposition that Dissenters from the Church of England were alone intended; they both agreed in the proposition. It is stated by the Information, it is admitted by the answers; there was no question left to decide—none. There was nobody to represent any third interest, nobody to argue any third question, nobody to assist the Court in any different decision. The Attorney-General, if he had thought proper, might have caused that to be done by intervening himself, and by instructing other Counsel to take particular lines of argument on

lf. He might have done it. We know that as to the fashion that has
l in one or two cases in modern times,—I now address my observa-
ticularly to the noble and learned Lord on the Woolsack and another
d learned Lord whom I see in the house,—of introducing the Solicitor-
as a party to the record as well as the Attorney-General. We know
d Eldon declared, when a record so framed came before him in the
:ase, that he had never heard of such a thing in the whole course of
ice. In truth, it had been suggested, I believe somewhat hastily, by
ent judge now deceased, Sir John Leach. I believe it was afterwards
in one or two records which were constituted in that way, making
citor-General a party to represent some other interest, where there
o interests, both of which were represented by the Crown. But,
la, up to the commencement, and long after the commencement, of
lon's judicial day, the affairs of courts of equity have gone on and the
the Crown and the public and individuals have been adjudicated upon,
eat judges as ever sat, or probably can ever sit, in courts of justice
acting on any such notion; it being the right of the Attorney-General
rne himself, where there is an information, to instruct or cause to be
d as many counsel as he pleases, who may take such lines in the ar-
ns may present different interests or rights of the Crown on the part
ublic. Therefore, that course might have been taken here, if neces-
he Attorney-General did not desire to do so; there was no other
raised; and if the Court had gone on to decide any question as be-
initarians, it would have done—if I may so express myself with respect
ility—it would have done an act of great rashness; it would at least
ed very indiscreetly: it would have been deciding without a record,
argument, without parties.

rds, upon these grounds again I say the Decree, as it seems to me,—I
ery wrong, but I speak advisedly,—the Decree appears to me a perfect
precision and accurateness, because it does not go on to decide upon the
on at the bar of both parties that Trinitarian Dissenters were alone
, but says that Unitarians are not intended. The Decree is that of a
nd considerate judge, applying to the question before him, deciding
g to the best of his judgment that upon which alone he has the means
ng at a safe conclusion, avoiding the decision of useless points, and,
, not prejudicing the absent, nor going into a matter upon which the
the absent may be involved.

rds, this Decree leaves open the entire question, Whether the benefits
:harity belong wholly or partially to members of the Church of En-
If the members of the Church of England shall ever think fit to say
are entitled, exclusively or otherwise, to the benefit of this Charity,
ey to-morrow obtain the signature of Her Majesty's Attorney-Gene-
information calculated to raise that question regularly and properly,
t they may obtain the opinion of the Court. My Lords, even in this
proper stage and in a proper manner, that question may arise; and
if I may judge from what has passed, nobody can be more alive to
it than the learned and noble Lord upon the Woolsack, who has had
in the Court of Chancery to decide upon petitions presented to him
is Decree, from different classes of religious professors, to go in before
er for the purpose of proposing Trustees. I attended his Lordship as
upon one at least of those occasions, and his Lordship made an order,
elieve appealed from, allowing individuals who were not parties to
to go in before the Master to propose themselves as Trustees. If
of the Church of England have not done so, (I know not whether
e or not, but I know that different classes of Trinitarian Dissenters
ne so,) it has been their own election and choice; they might have
The Lord Chancellor would, as I suppose, or might, have given
order to do so, if he did not entertain a clear opinion against them

upon the construction of the Deed. He probably would have done so, and then have considered the matter afterwards, upon the Master's report, if they elected to come in. I know not whether they have done so or not.

Again, there is in this Decree,—and if your Lordships will allow me to look a little further on, you will see that there is about the middle of page 139 of the Appellants' Appendix a reference to the Master, "to approve of a proper scheme for the application of the residue of the funds of the Charity, after paying and retaining thereout the costs of all parties, and the costs, charges, and expenses of the Relators and of the Defendants." I know not the nature of that scheme; it is a scheme, as your Lordships see, applicable to the savings which had been accumulated during the pendency of the Suit, and had not been applied from time to time. For anything I know the question may arise there, and then the Court will be competent to deal with it in a manner which at the hearing it could not; but then it will be at the instance of persons who will voluntarily come in and associate themselves in the Cause.

The Cause at the original hearing is, as several of your Lordships know, in a very different position. The power of coming into the Master's Office, and of raising the question there, is one thing; the power of dealing with the question at the original hearing of the Cause is another, and a totally different one; but, my Lords, independent of these observations, however that may be, the power of filing another Information, if it should be desired, cannot be questioned; nor can it be questioned that this Decree, as between different classes of Trinitarians, leaves the matter, as it ought to do, wholly untouched. The simple question raised on the Record was between parties admitting, on the one side and on the other, for the sake of the Cause, that Dissenters, and not members of the Church of England, were entitled to receive the benefits of the Charity; not suggesting a doubt or a question as to the Church of England, or any doubt on any question, but that one question which the declaration of the Court decides. It appears to me, therefore, that as no difficulty was suggested to the Court, as the form of the Record precluded the suggestion of such a difficulty, and as the opinion of the Court was not asked upon that point, not only need not the Decree to have gone further than it has done, but it would have been an indiscreet and highly improper Decree if it had gone any further than it has. It appears to me that exemplary caution is shown in the shape which it at present bears.

My Lords, I do not think it necessary to trouble your Lordships with any further observations upon that part of the Case, except just again to remind your Lordships, if you will forgive me for doing so, that I represent the Attorney-General officially here; and I am not desiring in this Suit any further interposition on the part of the Court. What have the Trustees to do with it, if they are properly removed? If the Trustees are improperly removed, a point to which I am presently coming, then again they may have a right to be heard, if heard they could successfully be; they may have a right to be heard upon the question, Whether the Decree ought not to have gone further? But if the Trustees are properly removed, a point to which I am now about to proceed, what have they to do with the question, In what manner the Charity is to be administered in future? What *locus standi* is there for them with respect to the administration of a matter which they have ceased to administer, and as to which they cannot be heard to allege any interest? If, indeed, they were to continue Trustees, I do not deny their right with reference to the future conduct of the Cause, and the future conduct of the Charity in this Suit; but if they are properly removed from being Trustees, how can they be heard to make a suggestion upon the subject. I trust that my former observations will be held by your Lordships sufficiently well-founded to preclude any necessity for going into the consideration of the question in that view of the Case; but I thought it right not to suffer that view of the Case to pass entirely without remark.

My Lords, I then come to the question (still upon the assumption that the

principle of the Decree upon the main point of the application of the Charity is right) of the removal of the Trustees. Will your Lordships have the goodness to refer to one of the first pages, showing the Title of the Appeal, and you will find that Mr. John Pemberton Heywood never was an Appellant. Mr. Shore is dead, but died, I believe, pending the Appeal. Mr. Bealby is dead, and he died, I believe, pending the Appeal. But Mr. John Pemberton Heywood never did appeal at all, because, I believe, he died before the Appeal was presented. At all events, your Lordships will not see his name there. He is not before you as a party, and never was; and, my Lords, if he had been alive, it would have been a little singular to have heard him as an Appellant upon this point, inasmuch as the Decree which is before your Lordships, and the truth of which is not impeached, contains this statement: "And the Relators, by their Counsel, having now made an offer to allow the Defendant John Pemberton Heywood to remain a Trustee of the said Charity, and the said Defendant not having by his Counsel accepted such offer, this Court doth order and decree that the said Defendant, John Pemberton Heywood, and also all the other Defendants, be removed."

My Lords, from personal respect to Mr. John Pemberton Heywood, his age, his character, and his station, though those who conducted the case of the Attorney-General thought that there was sufficient ground to remove him, yet they proposed at the Bar that he should continue in the Trusteeship, as a mark of personal respect towards that gentleman. That offer, as your Lordships see by the Decree, took place in my presence: that offer was not accepted, and accordingly he was removed with the others. My Lords, that consideration, and the circumstance that he never was an Appellant before your Lordships, removes all consideration of him, for the present purpose, out of the question.

LORD BROUGHAM.—Does Mr. Heywood in his answer swear that he was an Unitarian?

Mr. KNIGHT BRUCE.—No; Mr. John Pemberton Heywood was not an Unitarian. We never thought of such a thing, or alleged it at all. The ground of this application was quite foreign to the ground of religious belief; but those who conducted the Case on the part of the Attorney-General, acting under the instructions received, as they expressed themselves respectfully towards all parties concerned, so they expressed themselves with particular and marked respect towards Mr. John Pemberton Heywood personally, and evinced it in every mode they could; and it was not their fault that the Counsel of Mr. John Pemberton Heywood did not think right to accept that offer, which, though not enforcible as a right, was a tribute to his personal character; but he is not an Appellant, and, I believe, he is no more.

Now the other Trustees removed were, Mr. Samuel Shore the younger, who is dead, and therefore he cannot be a Trustee, Mr. Offley Shore, who is alive, Mr. Peter Heywood, Mr. Thomas Walker, Mr. Daniel Gaskell, Mr. John Wood, Mr. Charles Wellbeloved, Mr. John Kenrick, Mr. Bischoff, Mr. Bealby, who is dead, Mr. Oates, and Mr. Palmes. Those are the Appellants, and those are the Trustees removed. Now of those it is admitted on the Record, and has been admitted at the Bar, that all are Unitarians other than Mr. Peter Heywood, Mr. John Wood, and Mr. George Palmes: other than those three, all are distinctly admitted to be Unitarians.

LORD BROUGHAM.—Mr. Peter Heywood is a son of Mr. John Heywood?

Mr. KNIGHT BRUCE.—A son of Mr. John Heywood. All are distinctly admitted to be Unitarians. I am anxious to confine myself to what is strictly and legitimately in evidence before your Lordships upon the present occasion, but I hope I may, without impropriety, with regard to Mr. John Wood, call your Lordships' attention to the cautious manner in which my learned friend the Attorney-General expressed himself with reference to Mr. John Wood upon religious subjects. My learned friend the Attorney-General (I carefully

attended to all that he said, as I am bound to do on every account,) distinctly avoided committing himself even as Counsel upon any statement of fact as to the religious opinions of Mr. John Wood. My Lords, I would put it to those who appear here for the Appellants, whether they would wish a gentleman of Mr. John Wood's station, character, or position in society, to remain in this Trust on the ground of his not being an Unitarian? I put it to those who stand here as his Counsel, respecting that honourable individual as I do, and as I believe all do who know him (I have not the honor of much acquaintance with him); considering his position in society and all that belongs to him, I will put it to my learned friends on the other side of the Bar, whether they would wish Mr. John Wood to be marked out to society as remaining in this Trusteeship on the ground of his not being an Unitarian? I say no more.

My Lords, Mr. George Palmes stands in a different position. Mr. George Palmes is undoubtedly a Member of the Church of England, and this being a Dissenting Charity, or at least being for the purposes of this Record a Dissenting Charity, it is one ground of removing him that he is a member of the Church of England; but I do not put the case upon that ground exclusively, even with regard to Mr. Palmes.

With regard to Mr. Peter Heywood, I do not collect very clearly what his religious opinions are. He does not appear to be an Unitarian; but whether he is a member of the Church of England or not I have not the slightest conception from his answer. He appears to attend different places of worship: he was educated, I think he says, at Cambridge.

Lord BROUGHAM.—It begins with saying that he has been brought up in the same class of opinions as his father, and that he attends the Church of England more than any other.

Mr. KNIGHT BRUCE.—But the father was not a member of the Church of England. Perhaps it is a want of clearness of apprehension on my part, but I have been unable to discover from the answer what Mr. Peter Heywood is.

Lord BROUGHAM.—He says he has been brought up in the same religious opinions as his father; he seems to refer to his father. It is not very distinct. The father is distinct enough.

Mr. KNIGHT BRUCE.—Yes; Mr. John Heywood is distinct enough, but there is certainly an absence of distinctness in Mr. Peter Heywood's answer. This observation I do not mean disrespectfully or uncourteously in the least degree; it may be the fault of my own apprehension, but I do not clearly collect what his opinions are. With regard, however, to the Unitarians, I apprehend that upon the assumption upon which I am now proceeding, little or no doubt can remain.

Now, with regard to all of them who are Unitarians, and all except Mr. John Wood, who stands in a peculiar position, the observations of my Lord Lyndhurst in his judgment apply with great strength. It is at the foot of page 29 of the same publication I referred to before. Lord Lyndhurst says: "The next question is, How, and for what purposes, have these funds been applied by these Trustees? In what manner have they discharged the important duty that was entrusted to them? If I am correct in my conclusions as to the intentions of Lady Hewley, the funds have been misapplied, and misapplied for a long series of years, and to a very great extent. This alone might, perhaps, be a sufficient ground for removing the Trustees. But it has been said, that the misapplication was unintentional upon their part, that it was an error of judgment, that they put a construction upon the instruments fairly and *bonâ fide* that would have justified their acts. But looking at the evidence in this case, I am compelled to say, and I say it with reluctance, that I cannot accede to this statement. I do not wish to enter into detail upon the subject, because I am desirous, as far as possible, to abstain on this occasion from everything that is personal, but I am forced to say, using the most gentle terms, that there has been, in my judgment, a strong, undue, and partial lean-

the administration of these funds, towards Unitarian doctrines and
ın objects. I shall not go through the evidence with respect to this
the case, but shall content myself with referring, by way of example,
points. How has it happened that almost all the Trustees are Uni-
that the vacancies have been so filled up as to make the whole body
tially Unitarian? as to place the entire control of these estates, and
ınd the management of the whole charity in the hands of Unitarian
s entertaining Unitarian opinions? Another subject to which I shall
illustration of what I have stated, relates to the Exhibitions to Man-
College. Almost all the exhibitions of late years have been given to
educated at that College. Upon a careful examination of the evi-
I must consider that, so far as relates to the education for the ministry,
ster College is substantially an Unitarian establishment. I refer to
ence, among others, of Mr. Manning Walker, who was himself edu-
an Unitarian, and was a member of that College. It appears to me
ınd decisive upon this point. If it required further confirmation, I
efer to Mr. Wellbeloved's letter, in which he calls upon the Unitarian
ers to subscribe to the support of that establishment, for the purpose
taining a succession of well-educated ministers in their class of Dis-
obviously meaning (indeed the fact is proved by the evidence,) those
arian opinions."

I shall refer your Lordships presently to some of the evidence with
to the mode in which these funds have been applied towards Unitarian
s. In general the fact is admitted. It will, however, be for me to
ır Lordships' attention, in particular, to some parts of the evidence, as
is made for continuing these Trustees, in any view of the case.

my Lords, before I come to that, there are certain other questions of
e more strictly technical, which must be brought under your Lord-
ttention. Upon the assumption that I am now making, it never could
en right that Unitarian Trustees should be appointed at all; it is sel-
at counsel are fortunate enough, when engaged on opposite sides, to
on a case which suits the purposes of both; but if there was a case
more strongly than any other supports the view of the case which I
upon, it is the case decided by the present Lord Chancellor which
ntioned by my learned friend, the Solicitor-General, yesterday. My
it is a recognition from the highest authority of every principle which
d wish to have supported for the purpose of the present argument.
ordships have it already upon your notes. The case is in 2nd Mylne
aig, page 304, the case of the Norwich Charities; it is at page 305
ım about to read. In that case, there was a charity originally founded,
clearly had no reference to particular creeds or religious opinions. It
pened that, at a subsequent period, a particular individual, who be-
to the Church of England, added a small bounty to that general mass;
uiring that that small bounty should be applied for the purposes of a
lar class of religion, namely, the professors of the Church of England,
cting the Church Catechism to be taught. There could be nothing im-
in that. Certainly, if the original charity was in itself not applicable
nembers of any particular religious establishment, none could be pro-
, and it would have been very hard for a judge to be called upon to say
the case of a general charity, it was a misapplication to graft upon
add to it a sort of off-shoot, one particular department or corner that
belong more exclusively to the members of the Established Church.
as the position in which the charity stood, and upon that the present
hancellor thus expresses himself: "As to the other point raised by the
Petition, I am asked to vary the Master's Report, by placing the Boys'
irls' Hospital under the care of a different set of Trustees from that
he care of which the Master has placed them. The Master, in select-
w Trustees, has, with my entire concurrence, whenever the charity

was for Church purposes, selected as Trustees persons who were members of the Church of England. It has been thought proper that when the object of the Trust has been exclusively connected with one particular religious party, the Trustees who were to have the control over it should be of the same religious party." Every man of common sense, or of ordinary feelings, to whatever creed he belong, will agree in the accuracy of that principle, whether it be applied in favour of the Church or against the Church. "The question is, What are to be considered Church-purposes? When I look to this foundation, I can find nothing alluding to a Church purpose, and I cannot hold, because I may have reason to suppose that Thomas Anguish, when he made his Will, in the year 1617, was a member of the Church of England, that therefore he intended that the only object of his Charities should be persons who belonged to the Church of England. He could easily have declared such an intention if he entertained it. His object was to found a Hospital for the keeping, bringing up, and teaching of young and very poor children that should not have friends to help them. Mr. Blunt has very properly observed, that members of the corporation might then have been Dissenters." (In 1617.) "The founder declared that he gave the premises to the intent, that if it should be thought convenient, the same, being large, spacious, and well-built, and having many rooms therein, might, after the ten years, be employed for the placing a master and dame, or other teachers, to bring up children that should be very poor, and should not have friends to help them, from the age of five, six, or seven years, to fourteen or fifteen, to be taught, in the meantime, according to their disposition, as that they might be fitting for service, or able to maintain themselves by their work."

Then the Lord Chancellor gives certain other directions, which are mentioned, providing for their bodily health, and for cases of accidents, and so on; and he proceeds to say, "Now I am told that these Charities have been confined exclusively to persons belonging to the Church of England. In order to justify such an administration of the Charities as this, it must be found in the terms of the foundation. The Royal Charter, which refers to the purposes for which the institution was established by Mr. Anguish, provides that the Charity of the Childrens' Hospital shall continue in such sort as in the Will of the said Thomas Anguish was mentioned. According to the terms of the Charter, the Mayor, Sheriffs, &c. were to maintain, educate, instruct, teach, and instruct in learning, set on work, and otherwise dispose of as many such children as the revenues would extend to, as to them should seem convenient. There is nothing then in the Charter at all alluding to any exclusive description of parties who were to share the benefits of the Charities, and all that can be said is, that there is a subsequent gift or settlement of 13*s.* 4*d.* to be paid to a clergyman of the Church of England for catechizing the children; and that is no doubt highly beneficial, whatever the objects of the Charity may be, as to confining it or not to a particular class; for if members of the Church of England send their children to the school, it is very fit that that they should be catechized by a clergyman of their own church. That, however, is no reason why I should infer that the original institution was intended to be confined to the children of members of the Church of England. It is quite impossible that any superadded gift can alter the original purpose of the foundation. I am not called upon now to lay down any rules for the future support and regulation of the school. My principle has been to confine the Trustees to members of the Church of England, where I found that the foundation was exclusively confined to the purposes of the Church of England I do not find that here. If I thought that there was any danger that the rules which have for the time past been observed, with respect to this Charity, were likely to be departed from, it might require more consideration; but when I find that out of twenty-one Trustees who have been now selected, only four are not members of the Church of England, it is impossible to suppose that there is any real danger of altering the course of management and education which has

heretofore prevailed. If, on the other hand, I should say that the Master was wrong in appointing the four Trustees who are not members of the Church of England, I could only come to that decision upon the ground that I found something in the Charter, or in the constitution of the Charity, which would lead me to conclude that it was meant to be exclusively confined to the children of members of the Church of England, and I should then be, in fact, excluding all others from it. For this there are no grounds; and as I am quite sure that in confirming the Master's Report I incur no risk of altering the management of the charity, the petition must be dismissed with costs."

My Lords, to every word of what I have read from that judgment, I implicitly subscribe; I ask your Lordships to agree in every word of it, and to decide this Case upon the principles that you find there.

My Lords, upon the assumption upon which I am now proceeding, this is, though not a Church purpose, a religious purpose. The consequence is, that, upon the principles of the law declared and illustrated by what has fallen from the Lord Chancellor in the case which I have just read, the persons to administer and control that religious Charity must belong to the religion to which the Charity is appropriated, "Poor and Godly Preachers of Christ's Holy Gospel," and "Godly persons," a phrase used by the same individual, and in the same Instrument, where you find the other words which I have just mentioned. Now, if that is so, every Unitarian Trustee appointed for the present foundation was a Trustee improperly appointed, and who ought never to have been there, or to have exercised any of the functions belonging to a Trustee. My Lords, that alone disposes of the whole case as to the Trustees.

We have not troubled your Lordships with printing the Deeds; we have printed enough, and to spare. We have talked, and we shall talk enough, and to spare; but we have not thought it necessary to print the Deeds and documents which were in evidence, appointing the Trustees, but they are in evidence in the Cause, and I will state them to your Lordships. My Lords, the earliest appointment to which I wish to call your attention is the appointment of the 17th of September, 1807, of which I have a copy in my hand: it is a Deed poll, appointing Mr. Charles Wellbeloved, now living, Mr. Robert Driffield, deceased, Mr. Robert Sinclair, deceased, Mr. John Rawdon, deceased, Mr. Thomas Smith, deceased, Mr. George Palmes, now living, and an Appellant, and Mr. William Walker, the younger, now deceased, to be Sub-Trustees of the Charity. My Lords, I mention that because it is the origin of Mr. Palmes's appointment. Mr. Wellbeloved is an Unitarian, and therefore we need not trouble ourselves with the origin of his appointment; it is the origin of Mr. Palmes's appointment. The appointers are persons whose names are Richard Lee, Samuel Shore, William Walker, Benjamin Heywood, John Pemberton Heywood, and Thomas Walker, six in number. Of these Samuel Shore was an Unitarian. William Walker was an Unitarian, Thomas Walker was an Unitarian. It is sufficient for me to dispose of three of those persons. I am not able to say at this moment what is proved, if anything, with respect to the religious opinions of Richard Lee and Benjamin Heywood. It is sufficient for me to state to your Lordships, that out of the six appointers three were Unitarians.

Now the subsequent appointments are by persons of whom the greater proportion were Unitarians, and I may state to your Lordships, (for that sums up the argument at once,) that there is not one of the three persons, Peter Heywood, John Heywood, and George Palmes, who are not proved to be Unitarians, who has been appointed by so many as four Trustees not Unitarians. There has not been one of those three who has been appointed by so many as four, not being Unitarians. I will make that proposition intelligible to your Lordships; that alone, if the Lord Chancellor is correct, as I believe him to be in his judgment in the Norwich Case, upon the assumption upon which I am now proceeding, that alone disposes of the whole body of Trustees without anything more. I do not trouble your Lordships with the

more recent appointments. I go up to that of 1807, because it may be supposed to contain the greatest number of appointers who may not have been proved to be Unitarians, and the other appointments subsequently are more advantageous to my argument.

Now, if your Lordships will be good enough to look at Lady Hewley's instrument, I will refer to that copy of the Deeds which is most convenient to your Lordships. If the noble and learned Lord upon the Woolsack will say which copy of the Deed he would rather I should refer to, I will do so.

Lord CHANCELLOR.—In the Appellants' Appendix.

Mr. KNIGHT BRUCE.—The power of appointing new Trustees is in the latter part of page 4, of what are called by a singular sort of term which is to be found here, "the Grand Trustees;" the expression is, "It is hereby declared and agreed that from time to time, as and when any one of the Trustees shall happen to die, the survivors of them shall and may elect in the room of every such deceasing Trustee, such a person as they in their judgments and consciences shall think fit and approve of, who shall be a Manager of the said Trust-estates, together and equally with them the surviving Trustees, and have equally with them the same authority, benefit, and power respecting the Trusts hereby declared; and in case of the death of any such elected Manager, to elect in like manner in his room another like Manager, and that the election of every such Manager, for the time being, shall be entered and registered in some or one of the books to be so provided and kept as aforesaid; and that after such time as two or three at the most of the said Trustees shall have departed this life, the survivors of them shall and may add to themselves as Co-trustees with them, all and every the Manager and Managers so elected as aforesaid, to make up the number of Trustees completely seven in the whole, and the said surviving Trustees shall thereupon, by advice of counsel learned in the law, convey all their Trust estate of and in the premises of inheritance, unto the said persons who for the time being shall be such elected Managers as aforesaid, or to some other persons and their heirs, to the use of the said surviving Trustees and the said persons to be so added as Co-trustees as aforesaid, and their heirs; and shall also, by like advice of counsel learned in the law, assign all their estate and interest in the said leasehold premises to one or more person or persons, to the intent that he or they shall immediately thereupon re-assign all the same estate and interest to the same surviving Trustees, and to all the said elected Managers for the time being, thereby to complete the said number of seven Trustees; and that the same new conveyance and new assignment shall thereupon, by advice of counsel learned in the law, be declared by all the same seven Trustees by separate indentures, in like manner as the afore-recited conveyance and the afore-recited assignment are declared by these presents, upon the same trusts and to and for the same intents and purposes, and with and under the same provisos, powers, orders, instructions, and limitations in these presents mentioned and contained, and with the same or like direction as aforesaid, therein to be contained or declared for the nominating and perpetuating new Trustees, when and as often as two or three of the Trustees named in the Conveyance or Assignment for the time being shall have departed this life."

The scheme of the Deed was to appoint an incipient Trustee, a Manager, an Assistant and Successor, to use a Scottish phrase, as soon as any Trustee should die; but to prevent the expense of more frequent conveyances of the legal estate than might be found necessary, that the appointment should not be clothed with the legal estate until two, or three at the most, were dead: but there were always to be seven, for the Assistants and Successors, called Managers, were to have the same powers, functions, rights, and duties, barring the mere form of possessing the legal estate, as the Trustees, and as soon as the legal estate should come to be vested in but four persons, then there was to be a conveyance, which was a mere form. The appointment, therefore, could never be by less than four. Upon that principle there never has been, if you consider Unitarian Trustees improperly appointed, there has not

in the present instance been any proper appointment of any one Trustee here, not being an Unitarian, even if we admit Mr. Peter Heywood, Mr. John Wood, and Mr. George Palmes to be otherwise proper Trustees. They have not been appointed conformably to the power under which alone they could be appointed, because not one of them has been appointed by four Trustees not being Unitarians. That appears to me, with great humility, speaking as a lawyer, decisive upon that point, without reference to any other consideration whatever.

My Lords, we then come to the Almshouses Trustees. It is the following Deed, the foundation Deed of 1707. The Trustees of that Deed are the same as the Trustees of the other, and your Lordships will bear in mind that of the lands included in this Deed, there is only a partial trust for the Almshouses: the residue of the rents was to be applied for purposes the same as those declared by the first Deed. And with regard to keeping up the Trustees, the direction is (it is at the top of page 8), that "when any one of the Trustees shall happen to die, the survivors of the Trustees shall and may elect in the room of every such deceasing Trustee such person of reputation as they in their judgments and consciences shall think fit and approve of, who shall be a Manager of the said Trust-estates together and equally with them, the surviving Trustees, and have equally with them the same authority and powers respecting the Trusts hereby declared; and in case of the death of any such new-elected Manager, to elect in like manner, in his room, another like Manager, and that the election of every such Manager for the time being shall be entered and registered in some or one of the books so to be provided and kept, as is hereinafter mentioned; and that after such time as two, or three at the most, of the said Trustees shall have departed this life, the survivors of them shall and may add to themselves, as Co-trustees with them, all and every the Manager and Managers so elected as aforesaid, to make up the number of Trustees completely seven in the whole." And if it had then rested upon that, there could be no doubt whatever as to the Trusts, and the mode of filling up the Trusts. Subject to the observation, whether any difference can arise as to the Almshouse-trust from the other, upon which a word presently, the construction of the two Deeds will be exactly the same. But I will call your Lordships' attention to this, that the Trustees and Managers are (I am now reading from the middle of page 8) "the only special Visitors and Governors of the said Almshouse hospital and of all the poor persons therein, and they, or the survivors, or any four or more of them, shall have and use the sole power, full authority, and jurisdiction from time to time to govern, order, limit into." It was necessary that there should be four to act.

Now a difference is created as to the Almshouse by the short Deed of 1709, indorsed upon the Deed of 1707, and printed at page 10. But for what I am going to read, the Grand Trustees and the Almshouse Trustees would have been exactly the same body: "Memorandum. It is the will and pleasure of the within-named Dame Sarah Hewley, that the management of the said Hospital, as to the putting in the poor upon any vacancy, shall be in the power of the within-named Thomas Colton, and also of Timothy Hodgson, gentleman, of Matthew Bayock, gentleman, Mr. Samuel Smith, grocer, Mr. Robert Rhodes, upholsterer, Martin Hotham, mercer, and of William Hotham, mercer, all of the city of York, and such as shall be chosen to succeed any of them when they die. And that the Grand Trustees shall every year, at the beginning of it, leave the monies in their hands for paying the monthly allowance for the year ensuing, and pay what is necessary for repairs and rebuilding it (when need requires it), into the said Trustees' and Successors' hands, and their receipts shall be their discharge."

Thus your Lordships see there was a visitatorial power, or a power analogous to a visitatorial power, still in what are called the "Grand Trustees." It leaves those Sub-trustees, those associated persons, a sort of delegated body, for the purpose of nominating the poor, and maintaining them, and re-

pairing and rebuilding the Hospital with funds to be given to them by the other Trustees, but it leaves the visitatorial power, the governing power, in the others; and your Lordships will find, I believe without exception, in the instruments by which from time to time the Sub-trustees have been appointed by what are called the "Grand Trustees," a reservation to the latter of that visitatorial power. I am not aware that there is in any one of the Deeds an exception to that. It is not material that it should be so, because the form of the instruments renders it necessary. Your Lordships, therefore, see that though the Sub-trustees are to name the widows, they are not to displace them; they are not to have the governing of them; and they are to be appointed by the main Trustees. If, therefore, the main, or governing, or Grand Trustees were ill-appointed, were not persons rightfully exercising those functions and powers, the Sub-trustees have been appointed without competent authority, and therefore there has been no Sub-trustee well-appointed. For your Lordships in the instruments will find that all the practice in this respect has been conformable to the only construction that could be put upon the instruments. The appointment of Sub-trustees has been considered an act to be done by the majority of the Grand Trustees, that majority consisting of not less than four.

My Lords, if I am founded in these observations, if I am founded in saying that the principle of law, not decided for the first time, but declared and illustrated in the Norwich Case,—if I am right in saying that that principle is correct, then there is not a single Trustee or Sub-trustee who has been here well appointed. The appointment of each and every one of them was, upon the one ground or the other, originally invalid and incapable of withstanding the objection made to them.

My Lords, having laid these observations before your Lordships, I have but one point more to observe upon particularly to your Lordships in this respect, and it is one that I am surprised (I speak unfeignedly) that I should be called upon to make. My Lords, judging from my experience, such experience as I have had in courts of equity, and knowing who and what the noble and learned Lord upon the Woolsack is, who has been particularly addressed, and is to be particularly addressed by us all upon this occasion, I should have expected that my learned friends upon the question of the Trustees would at once have said, Mr. John Wood, however fit, was appointed after the institution of this Suit, and therefore we cannot maintain his appointment. Now I declare seriously that was what I expected. Instead of that, with a surprise I can hardly describe, I heard my learned friends one after the other (for I believe my learned friend the Solicitor-General concurred in the argument) impute it as a merit to Mr. John Wood, and as a reason for continuing him, that he, above all others and alone, had stood in that particular position in which, consistently with no rule or practice of any court of equity in any suit, could his appointment be allowed to stand. I am in the judgment of your Lordships, I am speaking in the presence of the noble and learned Lord upon the Woolsack, who has so much more experience and so much more knowledge upon such subjects than I can pretend to; and, if I may be allowed respectfully so to express myself, I fearlessly ask his Lordship particularly, whether any doubt or question can exist as to suffering Mr. John Wood to remain in this Trusteeship, even if he were as unexceptionable in other points, as he is unexceptionable in station and private character?

My Lords, such points, in my very humble judgment, are not to be argued. My Lords, it has been admitted at the Bar on the part of the Counsel for the Appellants, and it is the truth, that Mr. John Wood was appointed after the institution of this Suit, with the knowledge of the Suit, which Suit seeks in terms and expressly to remove the Trustees, and impeaches the fitness of every one of them. In the face of that Information, as it has been admitted at the Bar, Mr. John Wood is appointed a Trustee, pending a suit to remove the existing Trustees, by those very Trustees who are sought to be removed.

uch a thing stand? Is the rule *pendente lite* to be a mere mockery? Is
nean nothing? Are parties to be allowed at their own pleasure to in-
e without necessity upon the position and state of things as it exists,
a suit is instituted? and are they to be heard to maintain it, not to
gize for it, not to tender their excuses to the Court for doing so, but to
it as a merit?

Lords, I have often known, for the sake of saving expense, that which
upon technical grounds to be made matter of a supplemental bill, made
r of amendment, without so stating the date as to lay it open to a de-
r. It is perpetually done, it saves expense and saves time. It was done
a instance, and an objection has not been taken. That is the only rea-
hy a bill of supplement was not filed against Mr. John Wood; the ob-
n was not taken, and therefore the objection amounts to nothing, even if
meant to suggest it as an objection. I make this observation particu-
because Mr. John Wood having been appointed since the institution of
uit, I do not contend that there has been or can have been any misappli-
of the funds upon his part. The impossibility, as it seems to me, of
ing him to continue a Trustee, independently of the remarks which I
very seriously made with regard to the position in which he stands here
the argument in respect of his religious opinions, upon which I do not
to say any more,—independently of that, the circumstance that he has
appointed by those who had no authority to appoint him, even if there
een no Suit, and that he has been appointed by such individuals pending
, are alone sufficient to dispose of the case as to him.

w, my Lords, with regard to the mode in which the funds have been ap-
upon which I really am unwilling to trouble your Lordships at length;
a great point has been made with regard to the continuance of those
ses, and as I am warranted by what I have read in considering it a ques-
f importance who the persons should be, in point of creed and doctrine,
dminister a religious charity, I feel myself bound to call your Lordships'
ion a little to the evidence, especially as the evidence has been scarcely
gone into by my learned friends who have opened this Case. Now, I
t make this a matter of complaint, but it is generally the custom, and it
t of the labour that belongs to the position of the opening Counsel for
ppellant in the House of Lords, that he is to go through the whole case,
ce and all, and lay it before your Lordships. I do not complain of it, I
with deference to the superior knowledge and experience of my learned
, the Attorney-General, but I can only say that I for one never heard a
n the House of Lords opened more in a one-sided manner, (a mode of
sion not applying to the argument, which perhaps ought to be one-
but with regard to the materials upon which the conclusion is to be
d,) than that in which this Case has been opened by my learned friend,
ttorney-General, and my learned friend who followed him in this Case.
fore a good deal devolves upon me which ought not to have been de-
l upon me, which properly belonged in point of statement and occupa-
f your Lordships' time to those in fact who have preceded me.

our Lordships will allow me now to call your attention to the Respon-
case, you will find our heads of evidence classed under descriptions
you will see contained in first, second, and third pages. Your Lord-
already know, that there is no evidence in the Cause on the part of the
lants, none of any description. I must also state to your Lordships, that
Lordships are not in a condition here, even if you could be so inclined,
estigate the question, Whether evidence has or has not been improperly
ed below? Upon hearing some of the observations that fell from my
d friend, the Attorney-General, I called for the Petition of Appeal,—I
omit doing it at one period of the cause or the other, a practice I learned
Lord Eldon very early in my practice in this House,—and I found to my
se that the Petition of Appeal does not raise a single question as to the

evidence, but alleges, in the most ordinary terms, error in the Decree, of court upon the materials upon which the Decree proceeded. Your Lordships well know that if in an appeal the parties mean to object to the reception of evidence, it is a particular part of the appeal. The petition of appeal is prepared with that view, and it suggests that ground. If it is a common appeal against the decree: the appeal is against the decree, upon the evidence as it stood. Now though I am not aware that I have any particular interest, as Counsel for the Attorney-General, in laying any stress upon that point, yet in consequence of the observations that have been made, I must beg leave again to say to your Lordships that I have not the slightest recollection of any agreement or any arrangement having been made with respect to the evidence, one way or the other. If there is any record of it let it be produced; my mind is a blank sheet of paper upon the subject. It would be a melancholy thing, indeed, if one did recollect all the particulars of all the causes in which, when one has unfortunately passed a certain period of life, one has been engaged. I certainly do not say that all this may not have taken place; all I say is this, that I do not know it; I do not recollect it; I do not admit it; I do not believe it, and there is no evidence of it that I am aware of.

Now the classes or heads of evidence upon this point to which I wish particularly to draw your Lordships' attention, are those mentioned at pages 119, 120, 122, and the following pages, to 126, 7, 8, and so on for several pages, down to 141. My Lords, at page 119 Dr. Bennett says, "There is an Association denominated 'The British and Foreign Unitarian Association,' but he is not a member of it; that Mr. Wellbeloved, Mr. Kenrick, and Mr. Bealby, are members of the Association." Mr. Grundy, who is an Unitarian minister, speaks to there being an Association, and that he is a member of it; that Mr. Shore is a member of it, and Mr. Bealby, who is now dead, was another, and Mr. Kenrick, and Mr. Wellbeloved. Then this Unitarian minister, a member of the Association, goes on to describe that "The British and Foreign Unitarian Association is formed for the promotion of the principles" (I must read it, my Lords, for it is here) "of Unitarian Christianity, and that the leading or principal object of the said Association is the promotion of Unitarian worship in Great Britain and abroad, by assisting poor congregations, and sending out and giving assistance to missionary preachers. That he is acquainted with the principles of Unitarian Christianity, and with the nature and form of what is meant by the words Unitarian worship; and that the principles of Unitarian Christianity are at variance with or opposed to the principles of Trinitarian Christianity, or of Christians who profess faith in God the Father, and in Jesus Christ, his eternal Son, the true God, and in the Holy Spirit, one God blessed for evermore, and who receive and believe the doctrine of the Blessed Trinity as it is declared by the Articles of religion." Then he goes on to state the particular and main points upon which most importantly the different classes of worshipers differ, but which, as it is before your Lordships, I will not particularly read. Then he says that the principles or doctrines of Unitarian Christianity are set forth in certain publications which he has mentioned; and he verifies the Report of the British and Foreign Association and certain sermons, to one or two of which I shall bye and bye have to call your Lordships' attention.

Then Mr. Darbyshire, who is one of the Secretaries of the Manchester College, speaks as to the Association; he speaks of the doctrines of Unitarian Christianity in the same language, in substance, as Mr. Grundy had done, and says, "That he believes one of the leading objects of the British and Foreign Unitarian Association to be the publication and distribution of tracts, controversial and practical, in a cheap form, setting forth the belief and doctrines of the Unitarians." When your Lordships heard my learned friend the Solicitor-General use the word "controversial," no doubt you understood him to mean speculation upon religion without reference to any particular doctrine. But Mr. Darbyshire, who is the Secretary of what is called Manchester College,

states it here distinctly and plainly, "Controversial and practical in a cheap form, setting forth the belief and doctrines of the Unitarians"; and that "the Committee of the said Association annually prints and distributes Reports of its proceedings; but whether or not all the said Reports contain a catalogue of the books and tracts printed and published by the said Association, he does not know." But he speaks to the Sixth Report, and he says that that does contain a catalogue of the tracts published by the Association. Then he speaks of the doctrines as exhibited, and certain publications with which I will not trouble your Lordships now in detail.

Then comes Mr. Hincks, who is the Mathematical Tutor at Manchester College. He speaks of the Association in the same way, and speaks of the books also. He, your Lordships will be aware, is an Unitarian, as well as Mr. Grundy and Mr. Darbyshire, Mr. Darbyshire being Secretary to Manchester College, and of course an Unitarian.

Then comes Dr. Pye Smith, a name very well known to your Lordships, a very eminent person, who speaks of the belief and doctrines of various persons, describing them as Unitarians. Dr. Bennett, another very eminent person, speaks to the same effect, and says, "That the religious belief of the Unitarians or Unitarian Christians is at variance with and opposed to the religious belief of the Presbyterians, of the Independents or Congregationalists, and of those who are termed Particular Baptists, all Dissenters from the Established Church. That the variance or opposition is so great that no Unitarian minister, known to be such, would be admitted to officiate in any real Presbyterian Congregation, or in any Independent or Congregational Church, or in any congregation of Particular Baptists: nor indeed have the Unitarians any religious communion with the other classes of Dissenters; nor would they have been suffered to have had any with the Dissenters of Dame Sarah Hewley's time." I admit that that evidence is only to be considered upon the footing, as the Solicitor-General has stated it, of the opinion and deductions of a learned and well-informed man, particularly conversant with this subject, from his historical and controversial reading.

Then the Rev. James Turner speaks to the same effect; and then the Rev. Manning Walker, who is a gentleman brought up at Manchester College, to whom Lord Lyndhurst particularly alludes in his Judgment. Mr. Manning Walker says, "That he is acquainted with the religious belief and doctrines held and professed by Unitarians, having himself been brought up among them, and having studied theology in the Unitarian College at Manchester, since removed to York. That the religious belief of the Unitarians is at variance with and opposed to the religious belief of the bulk of Dissenters from the Established Church; in fact all, except the Unitarians themselves and a few of the small sect called General Baptists. That his belief is founded upon a thorough acquaintance with the subject, both in the way of books and conversations with some of the most eminent parties on both sides."

Then come other witnesses upon the same side, including particularly Mr. Grundy, an Unitarian minister, whose evidence upon this subject is entitled of course to particular attention; Mr. Darbyshire also, Mr. Brown also, and Mr. Hincks also.

Then, having stated these circumstances, we come to page 127, which contains extracts from the Report of Manchester College, of which the Rev. Charles Wellbeloved, a very eminent Unitarian, and one of the Appellants, is the Theological Tutor, of which the Rev. John Kenrick, an eminent Unitarian preacher, is the Classical Tutor, and of which the Rev. William Hincks, also an Unitarian, is the Mathematical Tutor. Here are the receipts of Manchester College, of benefactions: "Amicus, Stockton, by the Rev. Charles Wellbeloved, 4*l.*; A Friend to the Unitarian Cause, by ditto, 5*l.*; John Pemberton Heywood, Esquire, Wakefield, 5*l.*" He is now deceased, and we need not go into that more particularly. Then "Exhibitions to Students, the Trustees of Lady Hewley's Fund (Wakefield)." And there are six exhibitions of 20*l.*

each, amounting to 120*l.* The number is by the first Deed limited to five; but this being in favour of Manchester College, a Unitarian College, they make it six.

Then we find, "Disbursements, Salaries, and Fees." Now I am only going to call your Lordships' attention to this, for the purpose of showing whom these Trustees have considered "The Poor and Godly Preachers of Christ's Holy Gospel." It appears that at Manchester College, Mr. Charles Wellbeloved, Theological Tutor, had a salary of 180*l.* Your Lordships will find that afterwards raised to 200*l.* "Fees for thirteen divinity students, five guineas each, 68*l.* 5*s.*;" making his income from Manchester College alone in that year, 248*l.* 5*s.* My Lords, that is the gentleman to whom, as a poor as well as godly preacher, the Trustees of Lady Hewley's Charity have annually devoted 80*l.*; a sum enormously exceeding the utmost amount upon any occasion given to any other individual.

Now really there are many excellent men, I do not mean to say that they are better because they are members of the Church of England, but many excellent men labouring hard in the vineyard upon small livings, some of the most useful members of society, upon livings much less than 248*l.* a-year, who never, that I know of, considered themselves objects of charity. It is a misfortune, perhaps, that the Church is not better provided for, but generally speaking, a living exceeding two hundred a-year is considered not a very bad living. In that part of the island with which in my early years I was most conversant, a living of two hundred a-year is a sort of principality. I certainly never heard of a poor godly rector or vicar being considered as an object of charity if he had a living like 248*l.* a-year, clear of all expenses, and probably a house or apartments to live in besides. But it seems that Mr. Wellbeloved is poor with this, and therefore he has 80*l.* a-year besides.

Then comes the Rev. John Kenrick and his students. Then come the Annual Subscribers for the year 1817, among whom we find names familiar to us upon the present occasion, wherever there is Unitarianism to be supported, and if it is their conscientious opinion, it is greatly to their praise. There you find Walker, Shore, Shore, Shore, Gaskell, and other names. It is quite right that it should be so. Then comes "A List of Persons who are Trustees for Life in consequence of benefactions: Samuel Shore, jun. 100*l.*; John Pemberton Heywood, Esquire, of Wakefield, Four Benefactions, 36*l.*," for this College, that nobody affects to deny to be an Unitarian College.

Then comes a letter, which is, I believe, the letter alluded to by Lord Lyndhurst in his Judgment. It is a circular from Mr. Wellbeloved; I fancy he is the Principal of the College, as it is called, as well as a theological tutor:—"Reverend Sir, Not doubting that you are convinced of the importance of preserving a succession of regularly-educated ministers in our class of Dissenters, I take the liberty, in compliance with an order of a general meeting of Trustees, of requesting that you will recommend the support of the Institution now established at York in a sermon to your congregation, and permit a collection to be made for that purpose. At the same time, I beg leave to inform you that, at a meeting of Trustees, held at Manchester, April 3rd, 1805, it was resolved, 'That all ministers who preach annual sermons for the benefit of this institution shall be considered as Trustees.' I am, Reverend Sir, with sincere respect,"—he concludes in the episcopal form,—"Your affectionate brother and servant, Charles Wellbeloved."

My Lords, there follows an extract from the Report of the same College in 1821, where you find (and one is very glad to see it; I have no doubt he is a very worthy gentleman,) that they have raised Mr. Wellbeloved's salary to two hundred a-year, and the divinity students have increased to fifteen, which makes his emoluments from the College alone, 278*l.* 15*s.* But his poverty continues equally, because he still has 80*l.* a-year, as a godly preacher, from the fund of Lady Hewley's Charity. Then there are other statements of the same nature as these. There is the Report of 1831. They

f the same description, except that from 1829 to 1830 Mr. Wellbe-
income from that source seems to have decreased a little,—to 263*l.*
but in this page your Lordships will find Mr. Wellbeloved called,
ıght he was, Principal, as well as theological tutor.
I not remind your Lordships, that in these several specimens we have
u, the exhibitions are all from Lady Hewley's Fund, six, I think, in
ır, which we have given as specimens. Then comes, at page 130, Dr.
th. Dr. Pye Smith says, "That he is not acquainted with the Man-
College at York, but that he has read about it and heard it spoken of,
t, except in the case of lay students, it is the reputation or common
specting the said College, that it is suitable as a College or school for
ation of Dissenting Ministers only of the Unitarian persuasion; that the
lege or school, in the belief of Deponent, is not a proper College or
r the education of all classes or denominations, but only of that class
mination called Unitarians; that he is a Dissenter from the Esta-
Church, and of the class or denomination called Congregationalists,
in Deponent's belief universally Trinitarians; that the said College
proper and fitting College or school for the education of a Minister
cher of his persuasion, and, as his reasons for entertaining that
Deponent alleges his persuasion, that an upright tutor in theology,
will faithfully exhibit the arguments of opposite systems, and will
ge a full investigation of every subject, cannot but be solicitous that
ls should receive convictions of religious truth similar to his own;
spirit and tendency of the Unitarian system of doctrines is to lead
e minds into the assumption, that those doctrines which the majority
s Christians of all communions regard as the most essential principles
iospel, may be safely rejected as exploded errors, not even worthy of
bjected to a diligent and impartial examination." Then he goes on
her matters, as to Unitarians who were educated at the College.
mes Dr. Bennett's evidence, which is to the same effect.
comes the evidence of Mr. Manning Walker, who was himself edu-
ere. At page 132, he says, "He is acquainted with the College, that
t four years there as a Student in Theology." He states what the
belief is: "That he himself entered therein under the same impres-
I should not have gone there but with a view of becoming an Unita-
nister; that he is a Dissenter from the Established Church of the
denomination called Congregational, Independent and Trinitarian in
it, he having about the year 1803 been led, from an investigation of
ed Scriptures, to renounce Unitarian and embrace Trinitarian senti-
that the said College is not a proper and fitting College or School for
ation of a Minister or Preacher of Deponent's persuasion or denomi-
f Dissenters, and that no person of Trinitarian sentiments would send
o be educated there unless he were indifferent about matters of re-
elief, because the tutors who have presided over it, and do still pre-
r it, were and are reputedly Unitarians, and the whole course of
cal instruction during Deponent's four years' residence in the College
ected to the establishment of the Students in Unitarian principles,
the best of Deponent's knowledge and belief, still continues to be so;
ponent, knowing several Unitarian Ministers educated in the said
since its removal to York, is enabled more confidently thus to state
f; that he knows no person, besides himself, educated for the Mi-
erein, before or after his removal from the said College, who was
is not, an Unitarian; that the said Manchester College, in practice,
ow conducted, is an establishment for the education of Ministers of
arian class only." And then he goes on to speak about Unitarian
educated there, and upon subjects such as have been spoken to by
r ministers.
ords, Mr. Grundy, who is still an Unitarian, (Mr. Manning Walker

having, I believe, become a Christian,) says, "That he is acquainted with the Manchester College at York; that it is in high reputation as a College for the education of Dissenting Ministers: That as far as the fundamental rules of the said College are concerned, it is a proper school for the education of Dissenting Ministers of all classes, there being no inculcation of any particular doctrine or tenet, but that, in the opinion of many, it may be considered as more proper for Unitarians than Trinitarians, the heads of the establishment being Unitarian; that he is a Dissenter from the Established Church of the so-called Unitarian, and that the said College is a proper and fitting College for the education of a Minister of Deponent's persuasion." Then come Mr. Darbyshire and Mr. Hincks.

Lord BROUGHAM.—I suppose what Mr. Grundy must have meant to say, in his evidence as to the course of College education, when he says that there was no inculcation of any particular doctrines or tenets, Mr. Walker having said that the Unitarian doctrine was sedulously inculcated,—what Mr. Grundy meant must have been, that, in so far as the fundamental rules of the College are concerned, there is no test required.

Mr. KNIGHT BRUCE.—I certainly should wish so to consider it.

Lord BROUGHAM.—They do not say that they subscribe Unitarian articles, but at the same time they do not mean to say that they do not teach Unitarian doctrines.

Mr. KNIGHT BRUCE.—I am anxious so to consider it, both with reference to Mr. Grundy and Mr. Darbyshire, because really the proposition that there should be a theological tutor who does not inculcate any particular views of theology, has something so inexpressibly absurd in it, at least to my apprehension, that I am really at a loss to know what it means. If he had been the classical tutor, I could conceive that he might teach the students without inculcating any particular doctrines, to translate the Septuagint, or to translate the New Testament. He might mention various readings; he might lay the editions of Griesbach, and Schleusner, and others, before the student, leaving him to choose which he would; but then he would be only the classical tutor. Unfortunately, Mr. Kenrick is the classical tutor, Mr. Hincks is the mathematical tutor, and Mr. Wellbeloved is the theological tutor. Translation is not his business; it is interpretation as distinguished from translation which is the business of the theological tutor. What the theological tutor has to do there,—what the annual five guineas per student are paid for,—what the 200*l.* a year is paid for,—I am at a loss to conjecture. Therefore, I must suppose that Mr. Wellbeloved's account of his mode of teaching theology given by him in his answer, must be understood in the manner which I was so much gratified to hear suggested by the noble and learned Baron who has just now addressed the House.

My Lords, the passage I am now about to read is in page 54 of the Appellants' Appendix, from one of Mr. Wellbeloved's answers:—"This Defendant says that it is an Establishment," that is, that Manchester College is an Establishment "for the purpose, principally, of supplying the Churches of that denomination with a succession of Ministers, but not for the purpose of instruction in the peculiar doctrines of any sect. And this Defendant saith, that no such instruction is given,"—this is the theological tutor, my Lords—"that no such instruction is given, but that the principle upon which the Institution is established and conducted is, that every student shall be left to the free and unbiassed exercise of his own private judgment in matters of religious opinion."

Bishop of LONDON.—Where is that?

Mr. KNIGHT BRUCE.—I am reading this from the Appellants' Appendix, page 54.

Bishop of LONDON.—You are not reading the letter.

Mr. KNIGHT BRUCE.—No, my Lord, I do not understand how that letter and this answer could have come from the same person; but then I

have only a very ordinary and limited understanding.—"And this Defendant saith, that as the theological tutor at the said establishment, he most scrupulously adheres to that principle, endeavouring to impart to his pupils such instruction only as shall qualify them to interpret the Scriptures for themselves, excite in them a love of truth and a reverence for its dictates, and form in them a habit of searching the Scriptures; that it is his invariable practice solemnly to charge his pupils, when they enter on the theological course of studies there, in the name of the God of truth, and of our Lord Jesus Christ, the way, the truth, and the life, in all their studies and inquiries of a religious nature, carefully, impartially, and conscientiously to attend to evidence as it lies in the Holy Scriptures; to embrace or assent to no religious principle or sentiment held or advanced by their tutor, or any one else, but as it shall appear, upon the fullest examination, to be supported by revelation; to labour to banish from their breasts all prejudice, prepossession, and party zeal; to study through life to live in peace and love with all their fellow Christians, and steadily to assert for themselves, and freely allow to others, the unalienable rights of judgment and conscience: And, save as aforesaid, and in his former answer mentioned, this Defendant cannot set forth as to his belief or otherwise, whether or not the Manchester College at York is well known to be an Establishment supported by the sect of Unitarians, and for the express purpose of instruction in the peculiar doctrines held by the said sect of Unitarians:"—this gentleman being the theological tutor and Principal.

Now, my Lords, there is a great deal of very good advice, very well expressed, in what Mr. Wellbeloved has here stated; but, then, except so much of this advice as relates to morals and mere discipline of the mind, it is just the very course of conduct which a theological tutor ought not to pursue, unless there is some mode of teaching theology which is quite foreign to my apprehension, and which my understanding is unable to embrace. Mr. Wellbeloved here aptly describes the duties of a linguist and a critic; but the duties of a linguist and a critic are one thing, and those of a theological tutor are another. What is theology? Unless theology means something beyond the abstract and general belief in the existence of a Supreme Being, which one supposes all mankind, or nearly the whole of mankind, to hold, it means nothing, unless it inculcates some particular form or mode of religious belief; and, therefore, as I have quite satisfied myself that Mr. Wellbeloved meant to state what was not inaccurate, I profess my inability to comprehend what he has said. So much with regard to the evidence of the mode of teaching what is called theology in that College.

We then come to a piece of evidence as to which there was a very great struggle both before the Vice-Chancellor, before Lord Brougham, and before Lord Lyndhurst. It was admitted before the Vice-Chancellor, it was admitted before Lord Lyndhurst, and I believe it to have been admitted before Lord Brougham, but upon that I am not quite so positive. I led the case, I think, before Lord Lyndhurst; I do not think I led it before Lord Brougham.

Lord BROUGHAM.—The Solicitor-General led it before me.

Mr. KNIGHT BRUCE.—That was on the other side; Sir Edward Sugden led me; perhaps Sir Edward Sugden was Solicitor-General then.

Lord BROUGHAM.—It was his reply that was cut off.

Mr. KNIGHT BRUCE.—Yes, I was very willing to give up my own reply, but I was not quite so willing to give up Sir Edward Sugden's. I led the cause after Sir Edward Sugden left the bar.

Lord BROUGHAM.—A reply at the distance of three months from the argument which it is to answer is a very great advantage, and I suppose they were the more unwilling to give it up.

Lord LYNDHURST.—There was no reply before me.

Mr. KNIGHT BRUCE.—The Counsel heard before my Lord Lyndhurst

. ..., and there were heard at ... Mr. Booth. Then there remained ... Wetherell, Mr. Duckworth, and ... it was setting much too great a ... against the speeches of three such

... one against you.

...dingly accepted the offer of waiving ... that it stood upon the speeches that

... believe the noble and learned Lord ...ring the argument, of which we do not ... a reply unnecessary.

...e Attorney-General is mistaken. I cer... general question.

—It is a very convenient mode to suggest to ...ch they have to contend.

...y convenient when a cause is going on, to ... attention of the counsel; but I certainly ...eral result.

...least I have the debate upon this piece of ... I never had a harder struggle in my life in ...iece of evidence. It was admitted after a ... present petition of appeal raises no question ...dence. It is at page 13... of the Respondents ...r petition from certain persons calling them... of Unitarian Christians, on behalf of their ...em Chapel at New Church in Rossendale, ... of Lady Hewley's Fund:—"Gentlemen, having ... with bounty which enables you to relieve the ..., we beseech you of your clemency to hear us a ...", (previous to which the greater part of us were ... a Mr. Joseph Cooke was expelled the Methodist ...trines which were deemed anti-Methodistical, but ... to mention. A chapel was built for him in Roch... few years, till he wore out a slender constitution ...ve mind by excessive application to his work. ... this memorial, had sat two years under the m... he was in the Methodist connexion, and having ...trines for which he was expelled in the year 1807, ...ne of which was a local preacher,) left the Methodist ... Cooke to New Church, a place about eight miles ...each for us. He accepted our invitation, and came ...stance as long as his health permitted, while our ... his place at Rochdale. The progress which our ...ht us to make, in thinking, and the pecuniary em...ances to which the communication of our thoughts has ..., we will speak of them apart. We had been set a ... Methodism which Mr. Cooke was supposed to have ... we began to examine the doctrine of Original Sin as ... we thought we saw sufficient reason to discard such an ... doctrine, at least such it now began to appear to us. ...settled in this, we proceeded to examine the doctrine of ... which, as commonly taught, teaches us that God the Father ... show any mercy to the sinner till the claims of his justice ... they go on stating things, which I had rather not read, ... this: "With a whole heap of inconsistencies, which ... doctrine, caused us to cast this ancient piece of orthodoxy

ɔles and the bats. We then began to think about God being Three and One in Three. This we could not understand. Much we but nothing we said, on this subject in public for the space of twelve Perhaps, at this period, we might well be called Sabellians. Thus iinisters had led us from orthodoxy to heterodoxy, when in March much-esteemed, useful, and laborious pastor, Mr. Cooke, was taken by death." Then they state that their condition was critical and iat their orthodox neighbours had long misrepresented their senti- ɔd that they dealt out damnation, and made other desperate attacks. :y say, "Our pains were much increased by considering ourselves as people in the country, if not in the world, who believed these things; ı, in condoling what, in the anguish of our minds, we conceived to be ɔrtune, have we said to one another, There is no people in the world eve as we do, and are treated as we are; for however strange it may o those whose acquaintance with men and things have been more : than ours, we did not at this time know that there were any Chris- ed Unitarians (though there were some in Rochdale), nor did we at there was any book except the Bible that taught the doctrines we raced. In this distress, ready to faint under our trials, we called g of the society, which now consisted of about sixty persons, all of ere poor labouring men and women, the result of which was to to proceed in what we had begun. It was observed that we could preaching elsewhere with any satisfaction." Then other statements :—"We set about our work, continued to inquire after truth, and tely after this we relinquished the doctrine of the Divinity of Christ. the place at which we are now arrived is supposed by our orthodox ırs to be the mystery of iniquity." Then they go on to state that elates to the building of their chapel, and to the state of their They state that their minister has not received for all his services ın 10*l.* a year; they say that they have heard of the liberality of the , and that, as the Trustees of Lady Hewley's Fund, they have it in ver to be kind to the needy: it is signed by three trustees, and it is ended by Mr. William Allard: there is also a recommendation of the n Ashworth, the gentleman who succeeded Mr. Cooke at this chapel, y various persons.

this was the petition upon which relief was afforded to this chapel, called. The Rev. John Ashworth, who succeeded Mr. Cooke, gives ence. At page 138 he says, "He knows Mr. Wellbeloved; that he senter from the Established Church," (meaning himself, I suppose,) ıat he is not any of the great classes of Dissenters, but sometimes Cookite, but supposes he might be called an Independent, not that ıgs to the Independents, but because his congregation is independent other; that he is an Unitarian, because Paul says, 'To us there is God, the Father'; because Jesus says to the woman of Samaria, ue worshippers worship the Father'; that he did, in the year 1815, a memorial to the Trustees of Dame Hewley's Charity, but Deponent keep a copy of such memorial; that he hath looked upon the printed pamphlet now produced and shown to him at this the time of his ɪtion, marked with the letters oo; that he believes the same to contain copy of the memorial presented by Deponent; that the manuscript ich the said memorial was printed was furnished, but not sent, by it to the editor of the said pamphlet; that he cannot tell where it Then there is a list of distributions, with reference to which evidence of the number which are known to be Unitarians. And as your ɔs also know that there is no evidence on the other side, it was, as we ightly considered by us sufficient only to give evidence of the general f the great majority of those persons, and to select a certain number of s in which the recipients were known to be Unitarians.

Lord BROUGHAM.—How is it shown that Mr. Ashworth's chapel received relief?

Mr. KNIGHT BRUCE.—It is among the gifts.

Lord BROUGHAM.—I cannot see it.

Bishop of LONDON.—Page 139, second column.

Lord BROUGHAM.—Yes, "John Ashworth, New Church, Rossendale, 6*l.*"

Mr. KNIGHT BRUCE.—And if your Lordship will look a little higher up you will see Mr. William Allard the recommender of Mr. Ashworth. Your Lordships will be good enough to bear in mind that this is a half-yearly distribution. The amounts would therefore in the year be double what is here stated. Now considering the allegations of the Information, which are very full and distinct to the point, it might probably have been as well if the Defendants had given some evidence themselves, as to which of the recipients of the charity were Trinitarians. We considered it quite sufficient to give evidence of a certain number who were Unitarians. That was enough for us to do. It is the fault or the election of the Defendants, if they have left the evidence a blank as to the thing, because as to the rest the inference is at least as fair that they were Unitarian donations, as that they were anything else. They might have given evidence upon the subject, but they have not done so.

Then, if your Lordships will be good enough to look on at page 140, towards the latter part of the first column of page 140, you will see in goodly contrast between Mr. Winterbottam's 2*l.* 10*s.* and Mr. Howell's 9*l.* 10*s.* Mr. Wellbeloved's 40*l.*, this being, as I have already said, only half a year, making the whole year, therefore, 80*l.*,—this gentleman being himself one of the Trustees of the Almshouse, at least himself one of the body, in that sense, and for that purpose, the spiritual pastor of many of the others.

Mr. ATTORNEY-GENERAL.—Mr. Wellbeloved is only a sub-Trustee of the Almshouse.

Mr. KNIGHT BRUCE.—I said so in the most cautious manner. I stated a Trustee of the Almshouse, and in that sense one of the body.

Mr. ATTORNEY-GENERAL.—Therefore having no controul over the distribution of the funds.

Mr. KNIGHT BRUCE.—That is your argument, and it may be sound for anything I know. But you have had more than a day to yourself already. I stated the fact with the most rigid accuracy, in spirit and in letter. This gentleman being shown, without reference to any private property, of which I earnestly hope he has a good deal, without reference to the probable proceeds of his chapel at St. Saviour-Gate, where it is not to be presumed that he preaches gratuitously, nor ought he to do so; without reference to possible private property, without reference to probable income from St. Saviour-Gate Chapel, he being shown to have nearly three hundred a-year from Manchester College alone, and yet under the charity provided for "poor and godly preachers of Christ's Holy Gospel," he is receiving 80*l.* a-year, and has been so for many years. Why, is this to be endured? Are we to be gravely told at the Bar that such conduct as this is to be considered as praiseworthy, as not the subject of any animadversion? My Lords, that is not candour; it is sickly affectation or hypocrisy; I do not attribute this to anybody treating it in that way, but I will not retire from the designation that justly belongs to it. I have no doubt these persons thought they were doing what was morally right and religiously right; I believe them all to be respectable men; I know nothing and I see nothing to the contrary; yet a graver error, independently of all matter of religious doctrine, I say a graver error as to the mere general application of the funds of a Charity, never was committed than in paying 80*l.* per annum out of these funds to a gentleman, under the term of "Poor and Godly Preacher," who is receiving nearly three hundred a-year from his College, who may also have private property, and must have an income from the Chapel where he preaches at St. Saviour-Gate. Be it that the Charity is an Unitarian Charity; be it that Unitarians ought to participate in it, ought

it exclusively; will any man in his senses looking at that Deed, : income proved against that gentleman, say, that it is just and fair able that that enormous proportion of these funds, enormous not rence to the whole, but enormous with reference to the quantum y other indivdual received from it, has been properly and fairly and :ly applied to increase the wealth of this gentleman? It is no theo- ıestion; it is a question upon which the most unlearned and most s man may decide; it is a question about which nobody can doubt; uestion to which every Trustee has been a party, except Mr. John 'ho was appointed too late for the purpose, but was appointed after ution of this suit, and by persons that had no right to appoint him, y those who are called the Grand Trustees

:omes the evidence of Dr. Pye Smith, in which he states that the of disbursements contains the names of some Unitarian ministers, of Ir. Allard is one. We considered it sufficient to specify those. Mr. urner happened to know a good many more besides; Mr. Walker hers. We did not think it right to burden the funds of this Charity expense of prolonging an investigation and inquiry into the habits rine and position of every individual thus benefited. I am satisfied, with great humility so express myself, that I shall have your Lord- dgment with me upon this point, and that the Attorney-General, represent, did all that was incumbent upon him.

TTORNEY-GENERAL.—If my learned friend will indulge in ob- s of that sort, I must say that my learned friend does not represent rney-General; my learned friend represents the Relators; and I be- ll such proceedings in Courts of Equity, there are three parties that dship will recognise, the Attorney-General, the Relators and the ats.

BROUGHAM.—We distinguish the persons, you need not trouble

TTORNEY-GENERAL.—The Attorney-General may appear, and ly does appear, by distinct counsel from those who are counsel for the ; and I say Mr. Knight Bruce is not Counsel for the Attorney-General, the Relators: he has no doubt a right to appear at your Lordships' not in the capacity of Counsel for the Attorney-General.

NIGHT BRUCE.—My Lords, Mr. Knight Bruce is the Attorney-Ge- n the spirit," my learned friend is the Attorney-General "in the flesh."

CHANCELLOR.—I think we understand the character in which ear.

BROUGHAM.—My noble and learned friend does not require to be ed as to what an Information is.

CHANCELLOR.—The Attorney-General does sometimes appear ly from the relators, when there is a contest between the plaintiffs defendants.

NIGHT BRUCE.—My Lords, as I have already stated, the Attorney- might at any time have intervened in the present suit, if he was dis- with the conduct of it; the Attorney-General has left the conduct uit to the Relators, as he had a right to do, or as he had a right not and the Attorney-General upon the present occasion is represented y the Counsel for the Relators, whom the Attorney-General has al- o be upon this record. My Lords, the names that are given were ed by those to whom the conduct of the case of the Attorney-General , quite sufficient for the purpose, and your Lordships are aware that no evidence upon the other side.

my Lords, without fatiguing your Lordships at any greater length is particular topic, let me ask whether, having regard to the obser- that I have submitted to your Lordships, it was by possibility con- rith the declaration in the Decree, which I am all along assuming to

be right, for the purpose of this argument, that the whole of the Charity was devoted to persons of a particular religious belief, that those Trustees should continue? I apprehend, my Lords, that upon no one ground upon which such subjects are properly dealt with, could any one of those principal Trustees or Sub-Trustees be allowed to continue; and that the only proper decree was that which sent it to the Master to appoint others. My Lords, no personal disrespect or personal imputation was involved in their removal. Sir Edward Sugden who led the Cause before the Vice-Chancellor, was particularly anxious that the Decree should be taken in the manner most agreeable to their feelings; of course, being second Counsel in the cause, I had no discretion to exercise; I had nothing to do but to obey what my leader pointed out; and therefore I did not even think upon the subject, beyond what I might in the exercise of my duty suggest to him out of Court; in Court I had nothing to do but to obey. Therefore, of course, I did not say a word about it. When the matter was appealed from, when I became leader in the Cause, I did not think it right to suggest or to take a different course; but I think it right to state, as I now happen to lead the Cause, that my own judgment never did concur in giving them all the costs, charges, and expenses which are given by this Decree. It is seldom that any measure of conciliation succeeds, very seldom indeed, and I never thought that in this case conciliation would do any good. It never occurred to me that it would. It generally produces the results which it is intended to prevent. Sir Edward Sugden was desirous, in order that the funds of this Charity might be saved from further expenditure, and that there might be a stop to litigation, to give the Trustees costs to the fullest indemnity, to the uttermost shilling. That enabled them to quit the Trusteeship without an imputation and without a blemish; because if a Trustee has not only his costs given him, but all his costs, charges and expenses, it is obvious that he retires, that he is discharged from the Trust without an imputation upon him, and that course therefore was taken in the present case. They had every shilling of costs, charges, and expenses given to them, up to the time of the Vice-Chancellor's Decree which removed them; they would not have been put to the expense of one penny as to the costs of the suit; their own expenses and every expense was allowed to them, there was no opposition upon the question; I believe that Sir Edward Sugden himself suggested that, at all events he instantly concurred in it; there never was any question raised upon it, it was not discussed for a single moment.

My Lords, I do not admit here that if that had been resisted, it would have been done. Certain costs of the suit I may admit that they would have been entitled to; but giving Trustees the costs of plain breaches of trust is rather new. If there be a misapprehension, that may be a ground for exempting them from costs; but, my Lords, in some of those cases there has been something more than misapprehension. They could not imagine that the charity was devoted to Unitarians principally or chiefly; their own argument precludes it. Look at the exhibitions, observe how they have been disposed of, so far as any evidence goes; look at the income given to Mr. Wellbeloved; look at the concession given to such a document, a document that I could scarcely have conceived to exist in a civilized country,—the Rossendale Petition and Address. Let us look at all those circumstances, and then say whether these Trustees were not dealt with most leniently, most respectfully, most kindly, in being treated as they were by the Decree.

But, my Lords, it is made matter of complaint that upon the Appeal, these Trustees have not only not been exempted from paying the Costs, but have not had their costs allowed. That, my Lords, is not a usual thing to give. I admit that it is done sometimes; I admit that it is within the competency of the Court, where there is a fund, though the appeal does not succeed, not only to exempt the payment of the costs, but give costs to the unsuccessful party; I admit it may be done, but the instances are not numerous;

the cases where it is done are the exception not the rule; and generally speaking, the unsuccessful appellant is considered as gently and kindly dealt with if he is not fixed with the costs of his unsuccessful appeal. That principle has been carried, I believe, by the present Lord Chancellor further than any of his predecessors whom I recollect ever carried it. If I might respectfully express an opinion upon the subject, I think it is in general a wholesome principle; but I have known the present Lord Chancellor apply that principle in cases which I could mention, in which several of his predecessors would not have done it; but I believe it to be in the long run a wholesome principle, and I have known, time after time, the present Lord Chancellor dismiss with costs an appeal to him either from the Master of the Rolls or the Vice-Chancellor, where nobody could doubt that there was a substantial question to be raised. The Lord Chancellor held that not to be the principle: if it is a substantial question to be raised, it merely makes it not a litigious appeal, and the Lord Chancellor says, I do not fix you with costs. *Habes pretium*, &c. You are dismissed with costs in such a case even where there are some very particular merits which should induce an appealing party not only to be saved from, but to receive costs.

My Lords, the Appellants had their Appeal below dismissed without costs; the costs of the Respondents were not given against the Appellants, but were given out of the funds of the Charity instead of against the Appellants personally; the complaint you have here made at the Bar is this, that they ought to have received the costs of the Appeal.

My Lords, if it be a question of difficulty, that is not enough. Was it a question of difficulty? My Lords, I bow with deference to the opinions of the two noble and learned Lords who held the Great Seal, who successively considered this a right case in which to ask for the assistance of two of the learned Judges: they were much better judges of what they required for their assistance or information than of course I can pretend or would pretend to be. But, my Lords, I may perhaps suggest without disrespect or impertinence, that it was not so much from any sense of difficulty attending the question, as from the magnitude and general nature of the question, and with a view of giving a decision which might perhaps be considered, though I do not know why it should be, more satisfactory to a great majority of persons. I can conceive several reasons of that description and of that character, quite independent of any difficulty in the question, which might have led one or both of the noble and learned Lords to pursue that course. But, my Lords, I cannot bring myself to think, and until I hear one or both of the noble and learned Lords themselves say so, I will not believe, that it was from any notion of difficulty about the question, that either of their Lordships desired the assistance of two of the Judges.

Lord BROUGHAM.—I will tell you, Mr. Knight Bruce, what my feeling was in asking for the assistance of the Judges, even where the question was not one that might afterwards have compelled me to do so; it was this, that it might tend to have the effect of preventing the parties from being dissatisfied with the judgment, and prevent an appeal, which I thought was always advisable.

Lord LYNDHURST.—I was not aware of the nature of the case before I heard it; and my noble and learned friend having had the assistance of two of the learned Judges, it was a matter of course that I should have their assistance. I was very glad when I knew what the question was, that I had that assistance.

Mr. KNIGHT BRUCE.—I remember Lord Lyndhurst saying so. Without any reference to the question, or knowing what it was, his Lordship said, in my hearing, "As Lord Brougham thought it right to have the assistance of two of the learned Judges, I certainly shall do so too." But I cannot believe, and do not believe, that it was from a notion of any difficulty about the ques-

tion that that course was then resorted to, and I am sure that your Lordship will excuse my adverting to the topic.

Lord BROUGHAM.—I did not know when I asked for the assistance of the Judges what the question was. I only knew that it was a question, from its having been so often mentioned in Court as to appointing a day, which excited very great attention and interest in a great body of persons in the country, and it was with that view that I called in the assistance of the Judges.

Mr. KNIGHT BRUCE.—Just so, my Lord. I am sure your Lordships will excuse my adverting most respectfully, and not at any great length, to that particular topic which, at first sight, might seem to be out of the line of argument, which I have to address to your Lordships; it does bear upon the question of costs which it has been thought worth while to go into, in arguing against this Decree, and which Decree I am desirous to preserve untouched. Now what was there, therefore, to call upon these Trustees to interfere? It has been said by my learned friend, the Attorney-General, that the Trustees had a duty to perform to the objects of the Charity, and so on, including of course Mr. Wellbeloved, because he was one of the objects of the charity, and he was one of the Appellants. But, my Lords, as Trustees I really do not know what duty they had to perform. Surely they might have left that to the Attorney-General. They really might leave the protection of the public interests to those to whom the law of the country had entrusted it,—the Crown, acting by its proper officer; for, as your Lordships well know, any party may always memorialize the Attorney-General with reference to a particular question in a pending cause, if he does not desire to present an information of his own. The Attorney-General will always hear a defendant, if a defendant in an information proposes a compromise, or suggests a view of the case which the relators, the delegate or deputy of the Attorney-General for the purpose of that suit will not listen to: the defendant 'appeals to Cæsar,' he goes to the Attorney-General, makes an appointment at his chambers, and the Attorney-General hears what the defendant has to say; he hears the defendant's appeal from the mode in which his, the Attorney-General's suit, is conducted; and I have known case after case occur in which, at the instance of the defendant, the Attorney-General has compelled the relator to take a different course in the suit from that which he was pursuing. Why? Because it was the Attorney-General's suit, and the relator is his deputy, whom the Attorney-General may at any time displace, and with whom he may at any time interfere. Those Trustees, therefore, have no business or interest whatever to carry the case any further on behalf of the public. They did not represent the public, however they might feel themselves personally interested or not. But if they did represent the public, why is patriotism always to be paid for? Is gratuitous patriotism a thing impossible? If these gentlemen meant to represent the public, why should they not incur a little risk and expense for doing so? They had no right to place themselves in that position. They have, however, placed themselves in that position, for which the body of Unitarians feel very much obliged to them, and that ought to be their reward.

My Lords, it is then suggested, and I was very much surprised to hear it, that his Honour the Vice-Chancellor had recommended an Appeal. Now, I never knew that; I do not find in his printed Judgment a word that bears upon it.

Lord BROUGHAM.—Have you a copy of the printed Judgment of the Vice-Chancellor?

Mr. KNIGHT BRUCE.—Yes, my Lord.

Lord BROUGHAM.—I wish you would send me a copy of it.

Mr. KNIGHT BRUCE.—There are plenty, my Lord, here: in reading the Judgment, your Lordship will recollect that the Decree does not go the length of the Judgment, as to Original Sin, and so on; the Decree contains only the words Unitarian belief and doctrine. Now, I do not admit, and under correction, and until I am informed of it by some authentic evidence,

believe that the Vice-Chancellor ever did recommend an Appeal. I at the Attorney-General has been so informed, or he would not have I believe that my learned friend, the Attorney-General, Sir John ll, upon the present occasion, has been misinstructed. With respect ach recommendation of the Vice-Chancellor, it seems to me to be in- it with the tenor and tone of the Judgment, which seems to me to im- rong and clear conviction upon the subject upon which he argues: Lords, that the Vice-Chancellor may have considered an Appeal pro- in the highest degree likely; for, my Lords, here was not only invol- *odium theologicum*, but a *fund in medio*; and of all those who have ex- in courts of justice, I ask whether there is a more fertile or more pro- for litigation than either of those two, either the *odium theologicum* or *medio*. Here, my Lords, there was about 3000*l*. a-year of the mam- mrighteousness to be distributed, in some way or other, and there was uestion upon which men might reasonably feel strongly, namely, a of religious dispute. That the Vice-Chancellor, therefore, may have ed an Appeal probable, is very likely; I myself considered it very pro- ecause I confess I humbly thought in my own private mind that giving would rather be an incentive to Appeal, than have any tendency to heat of litigation; but, my Lords, I have no conception that the Vice- lor ever recommended an Appeal, and I do not see that there is the dence of it.

LYNDHURST.—Were you before the Vice-Chancellor?

NIGHT BRUCE.—Yes, my Lord, I was second Counsel before the ancellor; but it is such a lapse of time that it may have escaped my ion. I will give way to any gentleman who will tell me, speaking from lection, that the Vice-Chancellor did so; my own belief and impres- that the Vice-Chancellor never recommended an Appeal, that his was clear and strong upon the subject; but that he thought it robable that there would be an Appeal is what many others thought nsidered the Judgment clearly and undoubtedly right. I trust, there- it your Lordships will think that the Judgment of the Court be- as right as to costs as to everything else: and with respect to these I wish it to be distinctly understood, and I say it most sincerely, that irous of speaking with respect of every one of them; I am only speak- hem now upon technical grounds, as unsuccessful Defendants, who that which they had maintained, or which they had a right to de- hey have failed, and under circumstances which seem to me to give reason to complain. There is some apparent hardship (but that is arable misfortune, incident to the subject,) arising from this, that there o hearings before the office of Lord Chancellor; that is inseparable nature of the office; it may happen to all mankind, and persons de those contingencies, as they abide the other contingencies of life. is, that is nothing to what occurred to a gentleman whose name will atirely forgotten by one of your Lordships. Poor Mr. Page, in the case . Broom; he had three unsuccessful hearings, what with the Rolls and Chancellors, and other circumstances; but though he was considered m the beginning, he got only the costs of one hearing, because it was t the effect of those accidents must be where events threw them.

present case, however, there is a less hardship. I do not go out of ord, but I am sure this will not be denied, that those who conducted on the part of the Attorney-General were so desirous to relieve the as far as they properly could, that they took the sense of the Attorney- as to the propriety of presenting the unsuccessful parties, as of free using the word "bounty" in no disrespectful sense, with their costs of uccessful hearing before Lord Brougham,—not as a matter of right, there could be any claim for it, because it was an accident to which re as liable as anybody else; but it was done in a spirit of good feeling

and kindness. The Attorney-General, much to the satisfaction of the Relators, sanctioned that proceeding, and therefore, under a risk of being blamed by the Court hereafter for it, which they hope they will not be, the Relators considered the sanction of the Attorney-General such as to warrant them at their own risk, as between them and the Court, in presenting the Appellants, out of the funds of the Charity, with the costs of the unsuccessful hearing before Lord Brougham. Now, I am not alluding to that as a concession of right or principle, because I conceive the costs ought justly to have been borne by them, but it was done as a matter of kindness and feeling; and therefore, if any allusion has been made in the argument to the Trustees having, in point of fact, had to pay the costs of two hearings, it is an allusion that ought not to have been made without some accompanying explanation.

I have now, my Lords, I believe gone through every objection, as far I am aware of them, which has been made to this Decree, consistently with the supposed correctness of the position that the Charity was not meant for those who deny the Godhead of Christ; and I hope that your Lordships will feel perfectly satisfied that the Decree is in every point, great and small, both in respect of what it does and of what it omits to do, exactly and precisely (except that I, individually, think it too favourable to the Defendants,) the Decree and the only Decree which the Court could with any propriety have pronounced. It is not my fault that I have entered into this part of the case; it has been gone into at great length on the other side of the bar, and it was therefore part of my inevitable duty to submit some remarks to your Lordships upon it.

I now go to the main and the really important part of the case, the establishment of the position which I have hitherto assumed to be true, that those who deny the Godhead of the Saviour are not and were not proper objects of this Charity or any part of it.

My Lords, various observations have been made upon this part of the case in the argument, which seem to me to have gone much beyond the mark, much beyond the question before you. My Lords, I am at least as frail as my learned friends who have preceded me, and I am therefore afraid that I, before I conclude, may in some degree expose myself to the same observation. But, my Lords, if I do, it is under your Lordship's judgment that I shall fall, and certainly not under that of my learned friends, who have set me the example, which I mean to avoid following, as far as I can, of wandering from the road to be travelled.

My Lords, I can conceive a great portion of the argument, skilful and polished, to which your Lordships listened yesterday from my learned friend, the Solicitor-General,—I can conceive a great part of that argument to have fallen from him, from an attention, to a certain extent laudable,—if he will forgive me for saying so, for expressing an opinion of what he does,—laudable on the part of the Counsel to a certain extent, with regard to the feelings of his clients. In substance, though not in form, he represented the Unitarian body generally; and it was a natural feeling on the part of that body in a great cause of this description, where their peculiar tenets come under discussion, to enter into the consideration of the question in such a way as would enable themselves and their peculiar doctrines to stand as fairly before your Lordships and before the world as they might be made to stand. It was a very fair object, it is the only object to which I can ascribe much of what has been said before your Lordships upon the present occasion; I do not complain of it.

My Lords, the great object, next to the question of evidence and the construction, seems to have been to establish that Lady Hewley was not a person adverse to creeds as matter of form and precedent, but substantially of latitudinarian principles, a person indifferent to any particular tenet of religion, a person holding that a believer in the Bible might put what interpretation and deduce what doctrines from it he pleased,—in other words, that a person who took his rule of life and conduct and belief from the Bible, might construe (I only give your Lordships one instance among many), might construe the para-

the 'Unjust Steward' literally, and literally apply it as a rule of life and
t, because such was his interpretation of the Bible. My Lords, such a
would fall under the class of those who are argued to entertain opi-
conformable to those of this pious lady, whom though suggested by the
ent to have been abhorrent to all creeds, I find in the rules of her alms-
prescribing even a creed to the women who are to inhabit it: this ab-
of establishments, this hater of forms, this latitudinarian in principle, to
all forms of worship, all constructions of the Scriptures were indifferent,
not only prescribing the catechism, but prescribing the creed to persons
re to be the objects of her Charity.

Lords, I shall recur presently to these inconsistencies, but before I go
ow me, my Lords, as a general remark upon the evidence, if so it is to
ed, that my learned friend, the Solicitor-General, went through yester-
borrow the language of a better-informed man than myself, and one
capable of expressing his thoughts with correctness and elegance upon
rticular part of the argument, I mean Mr. Baron Alderson, whom I be-
not to be present:—at page 15, my Lords, of the print of the opi-
which he delivered on his behalf and Mr. Justice Patteson's to Lord
urst, I find this, which I beg your Lordships to allow me to borrow as
ch better expressing my view of the Case than I can do it myself: "This
f the Case appears to us to be much confirmed by the peculiar language
ly Hewley's will, by that of her pastor, Dr. Colton, by the state of the
that period, and by the general tenor of history, both as to the doctrines
usually professed by the great body of Dissenters at that time, and their
interference with that particular provision in the Toleration Act appli-
to Unitarian preaching. We were much pressed with quotations from
s authors on this point by the learned and ingenious gentlemen who ar-
for the Defendants; but they have failed to satisfy us even as to the pro-
y of any such catholic intention as that for which they contend having
ntertained by Lady Hewley. Such a view may perhaps have been taken
w speculative divines of great benevolence of feeling, but was never very
lly received. It is indeed observable, that almost all the very men who
uch opinion, constantly asserted their own orthodoxy of belief on the
now in question, and that in no instance whatever that we remember
ey found to approve of the preaching or inculcating by the teaching of
, those doctrines now contended for and openly avowed by the Unitarian
ters in their discourses from the pulpit. The greater part, if not the
, of these quotations, seem to us applicable rather to the terms of church
union than to the present subject; for the question now is upon a cha-
be devoted to the active propagation of doctrines by pecuniary encou-
ent given to their professors,—and is not whether, without any particu-
t, it may not be allowed to persons differing on material points to waive
and notwithstanding to associate in one religious community together.
o not indeed think such a plan wise or likely to succeed in producing
in churches; but we do not doubt that it has been often entertained by
ative men who have not perhaps attended sufficiently to the results of
cal experience in human life; but this argument as to a supposed catholic
ion seems inconsistent also with the probabilities of this Case. Lady
y must have had fixed religious opinions, conscientiously and strongly
her, or else it is not likely that she would have made this foundation
ery unusual for religious foundations to be made by any other than per-
aving strong and fixed religious opinions themselves. Those who enter-
hat are called latitudinarian notions on such subjects are not commonly
who leave their property in this way. But waiving this, it seems to us
that Lady Hewley, by requiring the Apostles' Creed, or indeed any defi-
reed at all, as a necessary qualification in this case, has herself given a
re answer to this argument, and has negatived the probability of her at
aving ever entertained this supposed catholic intention, by which, look-

ing forward into futurity, she is imagined to have contemplated a continual movement in advance of religion, in the course of which all her own peculiar doctrines should, with others, gradually be absorbed and lost in the light and splendour of what is called increasing knowledge and reason; for the very object and peculiar advantage of a creed is to prevent this perpetual fluctuation, and to fix religious opinions by bringing them continually to a definite test. We have adverted to this part of the Case, not as considering it a very important topic, but as it formed the principal ground of the argument before us, we thought it not right altogether to pass it over."

My Lords, I have so often read those passages with admiration, they so exactly and accurately express what I have always felt and feel upon the subject, but could not have so well expressed, that I could not deny myself the pleasure of borrowing from this Judgment the language with which I should submit this part of the Case to your Lordships. My Lords, I shall advert to that view of the Case, I shall advert to the opinions bearing upon that particular part of the subject of contemporary divines,—if I may use the expression, the apostles and patriarchs of Presbyterianism in this country,—by and bye; but before I quit the allusion which I am now making to that part of the Case, I must suggest that it might have been as well if that which has been called, I think, a Supplemental Appendix, and has been handed into your Lordships' House on the part of the Appellants, containing such extracts as it seemed fit to them to make from various works, many of which are not of easy or universal access,—that it might have been as well if, by an earlier printing or an earlier communication, greater facilities had been afforded to us of testing the accuracy of the quotations, of looking at the context of the passages, and at the other writings of the same authors.

My Lords, pressure of time could not have been the reason for this course. My Lords, the Vice-Chancellor's Decree is dated on the 23rd of December, 1833; Lord Lyndhurt's Judgment of Affirmance was pronounced in February, 1836, though it bears the date of April 1835, because of course it bore the date when that noble lord held the Great Seal,—it was dated back by consent. The Appeal was presented without delay, and I believe it has been for a considerable time in your Lordships' House. The attention of all that portion of mankind in this country which is deeply interested in the particular subject, has been for years alive to it, and yet it was on Monday in this week, for the first time, after the commencement of the argument, that either we or your Lordships were permitted to have the benefit of seeing that which was to be presented, after the argument commenced, in the form of a Supplemental Appendix, a course of proceeding at variance with the spirit of your Lordships' rules, and at variance, as I think, (I may be wrong,) with the manner in which a case of this description ought to be conducted. Look at the magnitude of that thing, which may be called a pamphlet, but is in effect a thick volume;—look at that book which has been handed in for the purpose of supporting the particular doctrines, tenets and opinions of those with whom we are to contend, and then ask if it is humanly possible that we can be prepared within anything like the compass of time allowed for this Appeal, to apply ourselves to the various books or alleged books from which those extracts or alleged extracts have been taken, to verify the correctness of those passages therein given, or to observe how they may be qualified by that which goes immediately before and follows immediately after, or is to be found in other parts of the same publication.

My Lords, that is a disadvantage under which we have been sedulously placed; it is a disadvantage which, I am sure, will not weigh against us with your Lordships, for if you shall think upon that point our argument in any respect defective, I am sure you will make that allowance for it, if any ought to be given; though I believe that if that volume had been ten times trebled in size, if it had been as large as all the books together burnt at Alexandria, it would not have helped the case for whose assistance it has been thought necessary to produce that book at this time, as it has been considered ne-

cessary, in support of the theological opinions, to print an Improved Version of the Scriptures.

My Lords, thus much I thought it fit to say with regard to those extracts; I shall have occasion to produce to your Lordships some extracts from various authors. We have not brought the books here, because we did not consider it expedient to empty Red Cross Street into the House of Lords. My Lords, we have a publication having in some degree a similar object, but differently pursued; a book that has been before the religious public for a considerable time. I hold in my hand a book which I shall have occasion to cite, and which I shall use merely as a useful collection of extracts from works.

Their Lordships consulted together for some little time.

Lord BROUGHAM.—The House cannot sit after two o'clock to-day; Mr. Kindersley follows, and then there is the Reply, and the House does not sit after Friday. Now, is there is any chance of our closing the Case by that time? Mr. Knight Bruce is just beginning the Case; now, is there any chance of this Case being compressed, with the Reply, into those two days? I think not.

Lord LYNDHURST.—It is impossible, if that is the case; as the Lord Chancellor must break up at 2 o'clock, it would be a pity that Mr. Knight Bruce, who is about now to commence his line of argument upon the main point of the Case, should just proceed for a quarter of an hour, and then that the House should have to break off.

Lord CHANCELLOR.—We had better break off here.

Mr. KNIGHT BRUCE.—I trust your Lordships do not think that I have thrown away the time.

Lord LYNDHURST.—Oh no, not at all.

Lord CHANCELLOR.—If there is no reasonable probability of finishing on Friday, it would be better to break off here.

Mr. KNIGHT BRUCE.—If your Lordship pleases.

Lord LYNDHURST.—I think it will be inconvenient if the Case is finished all but the Reply, and then the Reply is made some months hence.

Lord BROUGHAM.—It is unfair to the other party.

Mr. ATTORNEY-GENERAL.—It is in your Lordships' hands; I should have thought, my Lords, that it would have been desirable to have all but the Reply closed.

Lord LYNDHURST.—We have too much experience of that to delude ourselves, Mr. Attorney-General.

Lord BROUGHAM.—What say you to the probability of finishing by Friday?

Mr. KNIGHT BRUCE.—Your Lordships rise to-day before the usual time; that takes off two hours to-day, which I had calculated upon: I had meant to close to-day, and I think I shall be able to close in two hours to-morrow; I may make a mistake.

Lord LYNDHURST.—I know the manner in which Mr. Kindersley argued the Case below. I know, from the scope which he took, that he will require an entire day; I am quite certain of that.

Mr. KINDERSLEY.—My impression, my Lords, is, that probably on this occasion I shall not occupy a whole day; at the same time, I am very fearful of committing myself to anything like a pledge upon the subject.

Mr. ATTORNEY-GENERAL.—My Lords, I cannot say that this a case in which I could waive the Reply, but I really do hope that it will not lead to any lengthened address on my part to your Lordships.

Lord CHANCELLOR.—If there was time on Friday for the Reply, it would be better to go on with the Respondents' case.

Lord LYNDHURST.—If we were entangled with half the reply——

Lord BROUGHAM.—That would be dreadful.

Lord CHANCELLOR.—It will be impossible to fix a time now.

Lord LYNDHURST.—It is very unpleasant for Counsel, when they are arguing a case of importance, to feel that they are arguing against time.

Mr. ATTORNEY-GENERAL.—It is very kind of your Lordships to intimate that; it would be very distressing to me if I were to reply under those circumstances.

Lord BROUGHAM.—Any Counsel who has the labouring oar, that is, the Judgment against him, must feel that.

Lord LYNDHURST.—Besides, Mr. Attorney-General, you must not anticipate that these two learned gentlemen will not give you a great deal to reply to.

Mr. ATTORNEY-GENERAL.—I know, my Lord, that all that learning and zeal can bring against us will be urged.

LORD LYNDHURST.—Learning, and zeal, and ingenuity, and a great deal more.

Lord CHANCELLOR.—Then we will adjourn till a day on which the learned Judges can attend.

MONDAY, 24th JUNE, 1839, FOURTH DAY.

Mr. KNIGHT BRUCE.—My Lords, in this Case, as Counsel for the Respondents, I had completed, or nearly completed, the observations that I had intended to address to your Lordships upon that part of the argument which supposed the propriety of confining the distribution of the Charity to persons believing in the Godhead of our Saviour; and I had endeavoured to show your Lordships, and I trust I had shown, that upon that theory the Decree was right and unassailable in all its parts,—right in going so far as it did,—right in not going further, as there was no necessity for deciding more than the immediate issue presented, no necessity for deciding anything between different classes of persons of the Trinitarian belief—no issue being raised as to any question between the members of the Church of England and others, whether the Trinity should be owned; that in all its parts the Decree was, upon the theory I have mentioned, perfectly and exactly, as it seemed to me, right.

My Lords, upon that branch of the argument, it seems to me that I left a portion somewhat short, and I think it my duty to bring before your Lordships, not at any great length, some further portions of the evidence with regard to that branch of the argument.

My Lords, in the Appendix to the Respondents' Case, your Lordships will find the index to the evidence is arranged. If your Lordships will have the goodness to look at the second page in Roman numerals, you will see evidence to prove the existence of a class or denomination of English Dissenters with certain doctrines, beginning at page 103, and then a class of evidence relating to an Association called "The British and Foreign Unitarian Association." That evidence goes to show the belief and doctrines of the Unitarians, and that the Appellants are Unitarians. Considering the admissions made in the argument and in the Case, it will not be necessary to trouble your Lordships with any detail of the heads of evidence which I may have to bring before your Lordships, for the purpose of showing the manner in which the Charities have been applied. I now desire to call your Lordships' attention shortly to those portions of the evidence which are between pages 103 and 126.

My Lords, the first is the Report of the British and Foreign Unitarian Association, to which Mr. Wellbeloved and others belonging to the Trust are subscribers, and of which they are promoters, and upon the Catalogue of which Society is that which has been called a Version of the Scriptures. I am now drawing your Lordships' attention to that, among other purposes, to meet the observation that was made, that that book, called a Version of the Scriptures, was a mere literary curiosity, was that which merely found its way into the catalogue of a society or individuals who were merely desirous to promote the investigation of truth and the cause of literature. Something to that effect having been stated by my learned friend the Solicitor-General I

have to call your Lordships' attention to some of the rules of the Association. "First, The Association is formed for the promotion of the principles of Unitarian Christianity at home and abroad, the support of its worship, the diffusion of biblical, theological and literary knowledge, on topics connected with it, and the maintenance of the civil rights and interests of its professors." There is no object, your Lordships see, literary, theological or other, but what is specifically bound down to what is called there "Unitarian Christianity." The Rules go on, and the fifth rule, which defines the leading divisions of its objects, is in these terms. "First, the promotion of Unitarian Worship in Great Britain, by assisting poor Congregations, and sending out or giving assistance to Missionary Preachers. Secondly, the publication and distribution of Books and Tracts, controversial and practical, chiefly in a cheap and popular form. Third, the pursuit of the two last-mentioned objects, as opportunity and the means of the Association may afford, in foreign countries, and the maintenance in the meantime of correspondence and general co-operation. Fourthly, the protection and extension of the civil rights of Unitarians. The business of the Book and Tract Department shall be conducted under the following regulations. First, every Member of the Association, and all Congregational and District Societies, shall be entitled, on application to the Secretary of the Book Department, to purchase the books placed upon its catalogue at prices to be fixed by the Book Sub-Committee. Second, a priced catalogue of the books intended for sale or distribution, shall be annually provided by the Sub-Committee, under the sanction of the General Committee, and sent once a year to every Member of the Association, and to every country society and congregation connected with the Association. Third, country book societies are invited to send their catalogues, in like manner, to the Secretary of the Book Department, and to concur in arrangements for facilitating the mutual exchange and circulation of the books published or held by each. Seventh, The Association shall adopt and carry into effect the Trust existing as to the Improved Version of the New Testament, under the management of the Unitarian Book Society at its Union, taking on itself the powers lately possessed by the Book Society."

The Report contains this passage: "Your Committee have endeavoured to act upon the spirit of the resolution, by facilitating exchanges with the various Book Societies, by a considerable enlargement of the Association Catalogue, to which they have added many Unitarian works of interest and acknowledged merit, and by arranging for a more prompt and regular supply of American Unitarian publications. The Monthly Tracts of the American Unitarian Association, which have obtained great and merited celebrity, may be always procured at the Association Office. Your Committee has had satisfactory evidence that these silent missionaries have not been silent advocates of pure religion."

Then, my Lords, there comes an enumeration of some of the names of the members and subscribers, among whom are Mr. Samuel Shore and Mr. Wellbeloved; and there is a catalogue of the books of this Society distributed by the Society. Your Lordships have heard at the head of them is "The New Testament in an improved version, upon the basis of Archbishop Newcome's New Translation, with a correct text and notes, critical and explanatory: the fourth edition, corrected to Griesbach's last text, with additional notes, super royal octavo. Second, the same, demy 12mo, with the introduction and the critical and explanatory notes, but omitting the various readings." Then come certain other books, every one of which is strictly and fairly an Unitarian publication.

My Lords, the next extract is a sermon printed for the Unitarian Tract Society, showing what are its objects and what are their claims to be denominated Christians. The next document at page 110, is what is called the Unitarian's Creed, with which I need not trouble your Lordships particularly. Then comes a document called the Unitarian's Appeal, a document called

"Unitarian Christianity compared with Reputed Orthodoxy," which is one of their documents. At page 111, is a sermon by Mr. Kenrick, which, among other things, contains in page 112 this passage: "We are convinced that no doctrines can ultimately prevail among a people allowed to think and examine for themselves which, like Transubstantiation, involve a sensible absurdity, or, like the Trinity, a metaphysical contradiction, or, like the doctrine of Atonement in its genuine form, are utterly repugnant to what nature shows and reason proves of the moral attributes of God. The surrender of their understandings is a price which men will not long consent to pay for the belief of any system of Theology." That is the first paragraph but two in that page. My Lords, the second paragraph in the extract, at page 113, is also worthy of notice. There is another sermon by the same Mr. Kenrick, which has this singular title, "Unitarianism the Essence of Vital Christianity." Then, at page 114, comes one of Mr. Wellbeloved's Sermons, proved to have been preached by him in aid of a subscription for the erection of an Unitarian Chapel in Calcutta, with the particulars of which I do not think I need trouble your Lordships. The second and third paragraphs, at page 116 of that sermon, are however remarkable: "Few who pay any attention to the state of religion in the world, and especially to the progress of Unitarianism, can be strangers to the name of Rammohun Roy. He had told a clergyman at Calcutta that he preferred Christianity to all other religions, and would certainly embrace it if it were not for the doctrine of the Trinity, which appeared to him quite as objectionable as the polytheism of the Hindoos." The sermon goes on in the same strain.

There is another sermon of Mr. Wellbeloved's, the extract from which begins at the foot of page 117 of the next page, intituled "Unitarians not guilty of denying the Lord that bought them." One of the remarkable paragraphs in that sermon is down towards the end of page 118, rather below the middle: "Of us certainly all do not speak well; few indeed can be found who do not say of us all manner of evil; beyond our own narrow yet daily enlarging circle, no one biddeth us God's speed, or holdeth out the hand of Christian fellowship, but many are they who hate us, who reproach us, who separate us from their company and cast out our name as evil. But it will be said that we deny his Deity; we refuse to acknowledge him as the second person of the Godhead; we do not allow him to be one God with the Father, Co-Eternal and Co-Equal, or even God of God. We confess the man Christ Jesus, but deny him as that incarnate, suffering and dying God which he is believed to have been by all others who bear his name. True, we do deny the Jesus of the Athanasian and Nicene Creeds, of the Liturgy and the Articles of the Established Church, of the confessions of faith adopted by almost all the Churches of Christendom; but let no one on this account apply to us the language of the Apostle Peter in my text, till he has proved that the doctrine of these Creeds on this point is indeed the doctrine of the New Testament."

Then there follows an extract from another Sermon, and then some witnesses as to the objects of the Unitarian Society, which certainly are sufficiently shown by the title and rules of that Society. The evidence verifies the Exhibits I have mentioned, and connects the Exhibits with the Defendants.

My Lords, there is one witness, Mr. Hincks, who is an Unitarian, at page 122, who is the Mathematical Tutor at Manchester College, York, who in the third paragraph, being examined as a witness, speaks pretty plainly out on the subject, more plainly, indeed, than in some other portions of his evidence; he also speaks to the books.

Then there is another class of evidence, beginning at page 123, to show the doctrines and belief of the Unitarians, and that the Appellants are so: They are almost all eminent persons, some Unitarians and some not, who are examined to this head. I would particularly direct your Lordships' attention

at Dr. Pye Smith and Dr. Bennett, both persons of great learning and ments, say upon the subject. Dr. Smith says, "That from his per- knowledge of various individuals, some of them persons of eminence g the party called Unitarians, but chiefly from his perusal of their ac- ed publications, he is acquainted with the religious belief and doctrines and professed by Unitarians, or by persons calling themselves Unitarian tians: that the religious belief of the Unitarians or Unitarian Christians cording to Deponent's belief, at variance with, or opposed to the us belief of all the classes or sects of Dissenters from the Established h, except only a portion of the sect called Baptists: that he is person- equainted with the Rev. Charles Wellbeloved, but not with the Rev. Kenrick: that they are both commonly called and considered and ed to be Unitarian ministers or preachers," and so on.

Bennett says, "he is acquainted with the religious belief and doctrines and professed by Unitarians, and persons calling themselves Unitarian tians; for though Deponent has not often heard them preach, yet he has heir writings, and as Professor of Theology has had occasion to discuss sentiments, and to consider how far they agree or disagree with the Sa- Scriptures: that he hath studied what is generally called the Unitarian on of the New Testament with Notes: that the religious belief of the rians, or Unitarian Christians, is at variance and opposed to the reli- belief of the Presbyterians, of the Independents or Congregationalists, f those who are termed Particular Baptists, all Dissenters from the Esta- d Church: that the variance or opposition is so great that no Unitarian er, known to be such, would be admitted to officiate in any real Presby- congregation, or in any Independent or Congregational church, or in any egation of Particular Baptists; nor indeed have the Unitarians any reli- communion with the other classes of Dissenters, nor would they have suffered to have had any with the Dissenters of Dame Sarah Hewley's

a there is the evidence of Mr. Turner to the same effect, Mr. Walker, as brought up at Manchester College, the Reverend Mr. Scales, Dr. law, Mr Grundy, a highly respectable Unitarian minister, and Mr Dar- e, who has been professionally concerned in the d fence, and Mr. a again, one of the tutors at Manchester College. Then at page 127 those proofs of pecuniary misapplication which I have read to your hips on a former occasion.

ought it would not be right to omit altogether drawing your Lordships' ion (I have done it very shortly,) to these parts of the evidence. Before e this head of the argument, I have again to beg your Lordships' atten- o this fact, which I trust you will carry with you throughout the argu- that this is a Case in which the nature of the charges made and the na- f the complaints made by the information, is most specifically and point- ed in detail brought forward by the information, and that the evidence on one side: whatever evidence there is as to matter of fact, so called, to the matter on which I am now observing, is solely and merely of the ndents; the Appellants elected to go into none. If, therefore, this matter to be decided upon evidence, the decision is one with regard to no court before whom it comes can have any option.

Lords, I trust that from what has been said, your Lordships will be con- l that the Decree was right in all its parts, both as to the removal of the tees, not merely on the ground of their participation in breaches of trust, the ground of the irregularity of the appointment of every one of them, ling Mr. Wood, who was appointed after the institution of the Suit, one objects of which was to remove the Trustees. The declaration, I sub- as exactly what it ought to be; prudently abstaining from deciding what cord did not call for, confining itself to the points which were raised, and ppears to me, doing that which every decree ought to do, deciding that

which the Case calls for, and abstaining from deciding anything which the Case does not call for.

Now then, my Lords, I am to prove that which I have hitherto assumed, that the Charity in question cannot be judicially held to have been designed for persons denying the Godhead of our Saviour. I have hitherto assumed that; I proceed to prove it. Before, however, I go into the details of that part of the Case, I am anxious to draw your Lordships' attention to one very important view of it, which I am only desirous of bringing under your attention slightly, in order not to occupy too much of your time, being satisfied that such is the importance of the Case, that if your Lordships shall be of opinion that anything turns upon it, you would in all probability, if I may presume to form an opinion on what your Lordships would do, you would be desirous to have that argument separately spoken to. It is one, as I think, as far as my own judgment is concerned, that will not arise in this Case; it is a point your Lordships will not have occasion to decide; and entertaining that view of it, and feeling its vast importance, I am only anxious to draw your Lordships' attention to it, so that you may be aware what is involved in the decision the Appellants call upon you to make. The decision which the Appellants call upon you to make involves this, that the denial of the doctrine of the Trinity is lawful by the Common Law. Your Lordships cannot decide in favour of the Appellants without coming to that conclusion,—a point upon which, whether difficult or not, it is impossible for those who are acquainted with Lord Eldon's manner and official habits, to read the expressions used by him in the case of the Attorney-General *v.* Pearson, which has been so often referred to in the present Case, without collecting that Lord Eldon's opinion was that which has been stated,—that it was unlawful by the Common Law. We have Lord Eldon's clear and distinct opinion, that if it was at any time unlawful at the Common Law, that unlawfulness remains. That is a point on which no man living can doubt, because, as the Toleration Act only removed certain statutory disabilities, and removed those statutory disabilities partially and conditionally, it did not in any respect or manner interfere with the Common Law. The Toleration Act allowed preaching and teaching by those who were opposed to the Established Church on certain conditions, and under certain restrictions; but it did not legalize anything which by the Common Law, independently of anterior statutes, was forbidden. That is quite established. So with regard to the Blasphemy Act, the 9th and 10th of William III., that only imposed certain pecuniary penalties on certain peculiar offences; it left the Common Law exactly where it was. The 19th of George III. substituted certain conditions as to preaching and teaching, for the conditions which were imposed by the Toleration Act of the 1st of William and Mary. That also left the Common Law exactly where it was. The statute of the 53rd George III., reciting in a very singular manner the Act of the 19th George III., but not going on to make any encroachments with reference to the 19th George III., simply strikes out of the Toleration Act the declaration that that Act did not extend to persons who by preaching or writing denied the Trinity; and it took away also the operation of the Blasphemy Act as to such persons, leaving, as Lord Eldon has specifically and plainly declared, the Common Law exactly where it stood.

Now, my Lords, the great question involved in this is, What did the Common Law mean by the term "Christians" and "Christianity"? There is a vast number of speculative doctrines of minor importance, upon which different Churches differ, but which are still consistent with Christianity. No sound writer in the Church of England refuses to acknowledge Papists to be Christians. We readily acknowledge members of the Presbyterian Church, we readily acknowledge Anabaptists, and various other sects, to be Christians. They differ from us in various articles, but they are members of the Christian community, according to the true meaning of the term. Christianity is part of the law of England; it has been so laid down by the highest

authorities; it has been so decided over and over again. Some of the cases, Woolston's Case and others, well known, which have been cited, particularly in the Attorney-General *v.* Pearson, and cited also in the Jews' Case, and the case of the Bedford Charity, cited by Swanston and Russell, and with which every lawyer is acquainted, have shown that a denial of the truth of the Christian religion, a denial of the truth of Scripture, is contrary to the law of England. What, then, is the Christian religion? In another part of my argument, I shall have occasion to bring forward before your Lordships certain authorities and references which seem to me to have this particular purpose. I have not gone deeply into the subject, because I am satisfied your Lordships will not decide a question of such vast and paramount importance without having it particularly looked into, and I do not, as I said before, believe it will be necessary to decide it, but I believe it will be found that there can be no accurate or legal definition of the term "Christian" or "Christianity," without involving as a necessary part of that term the Godhead of our Saviour. I believe that to be part of the legal and scientific definition of the term, and I believe there is ample authority for that. No one can read, as I have already said, Lord Eldon's judgment in the case to which I have already referred, without collecting from it that; though he did not go so far, which was unnecessary, as to decide that that was in his view the Common Law. The Appellants call upon your Lordships to say that Christianity, by the Common Law, does not include the necessity of belief in the Godhead of our Saviour, and in my opinion, therefore, as I have said, they call upon your Lordships to decide that, to which all science, all theology, all tradition, all learning, are opposed.

My Lords, the sense entertained on the subject by the legislature in former days, is evinced in a remarkable manner by the language of the Blasphemy Act, which partially subsists now, and has only partially been repealed, to which the Attorney-General referred in the case of the Attorney-General *v.* Pearson: "Whereas many persons have of late years openly avowed and published many blasphemies and impious opinions contrary to the doctrines and principles"—of what?—"of the Christian religion; greatly tending to the dishonour of Almighty God, and may prove destructive to the peace and welfare of this kingdom; wherefore, for the more effectual suppressing of the said detestable crimes, Be it enacted," and so on. Lord Eldon has reminded us, has called our attention to the fact, that the denial of the Trinity is declared by the legislature here, not to be one of those acts which is contrary to the doctrines of the Church of England, or contrary to the peculiar tenets or rules of any particular Church, but is contrary to the Christian religion. That declaration remains upon the Statute Book of the country, although the legislature has thought fit to do away certain peculiar penalties affixed by that statute to that which was already contrary to the Common Law.

My Lords, I have slightly and most imperfectly made reference to this most important part of the Case, but which will in the result be less important than the point to which I am now about to proceed. To argue such a point as this would require vastly more research than I have been able to make, vastly more learning of course than I am master of. I am now only referring your Lordships to the question for the purpose of calling your attention, as it is my duty to do, to the principle involved in the Appellants' claim, and which, if you decide in favour of the Appellants, you cannot help deciding. I am, on the contrary, prepared to meet that issue, if the Case shall come to that. My opinion of the evidence in this Case, and the rest of the materials for decision which it furnishes, leads me to think it will not be necessary to decide that all-important question, namely, what is the legal meaning of that term "Christianity" which is part of the law of England?

My Lords, in estimating the intentions to be imputed to Lady Hewley, whose views in founding this magnificent charity we are now considering, we must never lose sight, as a question of intention only, but no more, of the

fact, that at the time when these Deeds were executed by her, Unitarianism, as it is called, was proscribed by the legislature under the severest penalties, was untolerated, was illegal. That, as I have said, and as at least one of the learned and eminent persons who have decided this Case below, has also said, is an important index to the intention, but it amounts to no more.

An argument has been raised, founded on the case of Bradshaw *v.* Tasker, in 2nd Mylne and Keen, 221, decided in the Court of Chancery in Lord Brougham's time, to this effect, That if it was illegal at its creation, if the law had been changed subsequently, so that it had ceased to be illegal, the Courts are bound to give effect to it; a somewhat strange argument, it is true, that if an Act of Parliament be passed for the purpose of giving effect to particular charities———

Lord WYNFORD.—Was that decided upon the ground that the Act had no retrospective words?

Mr. KNIGHT BRUCE.—That the Act had a retrospective effect, which at once makes it inapplicable to the present argument. The case did not turn upon this, whether any subsequent change of the law could make that legal which was illegal at the time; but it turned upon this, that an Act of Parliament had passed, giving effect to particular charities. And so here, if an Act of Parliament had passed, declaring that, notwithstanding the illegality of denying the Trinity in the time of Lady Hewley, such a charity should be good, who would dispute that the Charity would be thereby set up? That was just the case of Bradshaw *v.* Tasker, for an Act of Parliament not applied to the particular charity, but applied to charities generally, had passed, giving the same effect to Roman Catholic charities as was by law given to the charities of Protestant Dissenters. The Court, having to construe that Act, construed it as retrospective in effect,—whether rightly construed or not, is not the question at present. The decision proceeded upon that footing; and having decided that the Act was retrospective in its effect, it could do no more than declare that the Charity was *ex post facto* set up, and it decided accordingly.

Now, if that construction of that particular Act was right, nobody can doubt the consequence. I may perhaps doubt very respectfully whether that construction of the Act was right or not; but that has nothing to do with the present question, because here there is no Act of Parliament. There was an Act of Parliament applying to Roman Catholic charities, there has been no Act of Parliament applying to charities, or supposed or intended Charities, of the present description. Bradshaw *v.* Tasker, therefore, has no application of any kind to this question; and I apprehend that if the act be illegal when it is done, a change of the law afterwards, unless it be changed retrospectively by express words, cannot make that good which in its origin had no validity. Therefore, the important index of intention which the state of the law at the time affords, as it is contended for on the part of the Appellants, is one which no court of justice can give effect to. The consequence of that would be, that it would be in the disposition of the Crown; as your Lordships well know, if there be a charitable intention, being an intention which cannot be executed, the disposition for charitable uses goes to the Crown.

It was so in the case of Da Costa *v.* Dupas, cited in several books, best recited from Mr. Cox's Manuscript in a note to Mr. Swanston's Report of the Jews' Case,—the Bedford Charity,—in which Lord Eldon decided that Jews were entitled to participate in the benefits of the Bedford Charity. It is in one of Mr. Swanston's volumes, as well as Mr. Russell's. It is in 2nd Swanston, page 522; the case of Da Costa *v.* Dupas is in a note at page 487. That case took the distinction between a bequest for teaching a religion opposed to the state, and a bequest in support of a mere act of religious worship. Da Costa *v.* Dupas decided that a charity for teaching the Jewish religion, for inculcating the Jewish religion, was void, and the Crown consequently had the disposition of the fund. But it was admitted there, and has

been decided in other cases, that a charity for the mere support of religious worship, the mere act of religious worship, is valid, unless there be something more in it illegal than is implied by that mere circumstance. For instance, a charity in this country to enable the Hindoos to worship in a manner agreeable to their own conscience, would be legal; a charity here for the purpose of inculcating that peculiar religion would be illegal.

Lord WYNFORD.—Is there any case of that sort, deciding that a charity for enabling Hindoos to worship would be legal?

Mr. KNIGHT BRUCE.—I think there have been one or two cases which have involved that principle; I am not quite sure of it, but I am willing to state the argument as much against myself in this respect as anybody could possibly require. In the present case, the charity is for "poor and godly Ministers," "for the Widows of poor and godly Ministers," and for "the providing a succession of poor and godly Ministers," by educating them; and if, therefore, that is a charity to be considered as extending to ministers of Unitarian doctrine, it would be that which would be entirely contrary to law, and would be impossible to be supported.

My Lords, the effect of that would be, of course, to give the disposition of the Charity to the Crown. But that does not arise until it be established that the Charity was one for Unitarian purposes, which is the point upon which the evidence fails. I am only calling your Lordships' attention to what would be the effect of the Appellants being right in their contention.

My Lords, some observations have been made in the Case that have struck me certainly as extremely singular, proceeding from the quarter from which they do. Your Lordships are aware that it is no part of the Appeal upon your table, that evidence has been received which ought not to have been received. I have already called your Lordships' attention to that point, that it is not under your consideration at all. But the observations made upon that have certainly been of a very singular description, because, if the evidence is rejected, the conclusion is inevitable that the Decree is right. I really cannot understand, (I say it with unaffected deference,) to use a familiar phrase, what my learned friends were at, in that portion of the Case; for all that the Decree has declared is, that persons professing what I may call Anti-trinitarian sentiments, are not entitled to the benefits of the Charity. That would be quite consistent with what would be the necessary result of there being a total absence of evidence, because nobody can doubt that if there be no evidence in this Case, the purpose is so generally expressed, that it would belong to the Church of England. Exclude the evidence, and the Church of England takes it. The conclusion is inevitable.

My Lords, this principle is a universal recognition; but the language of Lord Eldon will be much better than any I can use, and I will therefore, with your Lordships' permission, borrow his expressions. I am reading from the Attorney-General *v.* Pearson, 3rd Merivale, page 409. He says, "Several passages of this Indenture have been particularly taken notice of in the course of the discussion at the bar. There is quite sufficient of allegation in the Information to show, that it was a body of Protestant Dissenters who established this Meeting-house, in order to have preaching in it [of] the religious doctrines to which they were attached, and more especially if it cannot be said, for the express purpose of inculcating the doctrine of the Trinity, yet that they were Dissenters entertaining such a class of opinions as that the doctrines of Unitarianism would be directly at variance with their purpose in founding this Meeting-house. I observe upon this particularly, because I take it, that if land or money were given in such a way as would be legal, notwithstanding the statutes concerning disposition to charitable uses for the purpose of building a church or a house, or otherwise for the maintaining and propagating the worship of God; and if there were nothing more precise in the case, this Court would execute such a trust by making it a provision for maintaining and propagating the established religion of the

country. It is also clearly settled, that if a fund, real or personal, be given in such a way, that the purpose be clearly expressed to be that of maintaining a society of Protestant Dissenters promoting no doctrines contrary to law, although such as may be at variance with the doctrines of the established religion; it is then the duty of this Court to carry such a trust as that into execution, and to administer it to the intent of the founders. In this Case, it is impossible to doubt that the Trust was originally created for the purpose of maintaining a Protestant Dissenting institution." There are other passages in the Report to the same effect.

My Lords, while I have that Report before me, I may as well call your Lordships' attention to the pages in which Lord Eldon speaks of what I have just now been alluding to, the state of the Common Law, notwithstanding the Acts of Parliament that have been mentioned, which you will find at pages 399, 405, and 407; and certainly the ingenious suggestion that has been made with reference to the subsequent alteration of the law did not occur to the dull and inexperienced mind of Lord Eldon; because I find that he, in ignorance, having the Statute of 53rd George III. brought under his attention, says, "If the Common Law remains yet unaltered, and if the impugning the doctrine of the Trinity be an offence indictable by the Common Law, it is quite certain that I ought not to execute a trust, the object of which is illegal." So much for the purpose for which Bradshaw *v.* Tasker, which, whether right or wrong, has nothing on earth to do with the subject, was cited.

My Lords, having therefore called your attention to that circumstance, I really do not know that I need say anything upon the question of the evidence, except that I must do it, because I cannot tell what view your Lordships may take of this Case. It is my duty to go through every portion of the Case that such men as the Attorney- and Solicitor-General have thought it worth their while to address your Lordships upon, and therefore I must address your Lordships upon the subject of the evidence; because I repeat, that if you exclude all the evidence here, if you only look at the Deeds, it is clear that the Decree is right, because the Church of England being Trinitarian, and only Anti-trinitarians being excluded, no human being can doubt that that has been done which only could have been done; and considering that the Decree does not say whether the distribution is to be among any particular class or classes of Trinitarians, it is almost impertinent to address your Lordships upon the question of evidence. In saying this, I only speak, with great humility, my own views; I am bound to distrust them when such men as my learned friends who have preceded me, have thought it worth while to go into that part of the Case.

Then, my Lords, as to the introduction of the evidence, for the entering into which my only apology to your Lordships is the precedent to which I have referred.

Lord WYNFORD.—You say that is not a subject of appeal.

Mr. KNIGHT BRUCE.—No, it is not. But still I am bound to suppose, that if the evidence were worth nothing, and could not be looked at, you would not look at it. Now, with reference to the reception of the evidence, I am here for those whose opinions are at variance with the Church of England; I am here to maintain that the Church of England has nothing whatever to do with this Charity, and never can have anything to do with it. But that is not involved in this Decree. I, as Counsel, shall oppose, when it shall be necessary, the claim of the Church of England to this Charity to the utmost. The Church of England has nothing to do with it. But this Decree has not said this. This Decree is consistent with the rights of the Church of England, and therefore your Lordships are not called upon to decide that.

Now, with regard to the reception of the evidence, I think that if there be any one thing that more clearly establishes the propriety of its reception than another, it is this,—that it is the duty and business of a court of justice, before it expounds an instrument, to place itself in the situation of the maker

of the instrument, to know everything that he knew, to be surrounded by everything by which he was surrounded, and placing the expounder in the position of the maker, then not to add words, but then to expound the words; because no man can be in the situation of an expositor until he knows who the speaker was. My Lords, the familiar illustrations of that description, both in law and in ordinary life, crowd upon one. I need hardly refer your Lordships to the decisions which abound in our books upon the meaning of the word "children." Who knows what the word "children" means till you know what the state of the testator's family was, and the circumstances surrounding him? The word "children" will or will not include natural children, should the testator have such, and not have at the time legitimate children. If he had no legitimate children, but had recognised his illegitimate children, they would take under the word "children." If he had lawful children and illegitimate children, the lawful children only take, the illegitimate are excluded.

Again, look at one of the most ancient authorities of our law, a case of most frequent reference, Wild's Case in 6th Coke. You cannot tell the effect to be given to the words, create an estate tail, or create an estate by purchase in children, till you know whether the individual mentioned in the will had children or not. It is an authority settled in the law as long ago as Coke's time, that if I devise an estate to a man and his children, it is either an estate tail or not an estate tail, according to the position in which his family stood.

So, my Lords, in common life the instances are innumerable in which you cannot know what a man means till you know who the speaker is. Suppose a man speaks of drawing a bill,—till you know whether the speaker is my friend Mr. Romilly or a gentleman from the other side of Temple Bar, how can you tell what he means by it? So, as to the habits of life; if you hear a man speak of rising late or rising early, you have not the slightest approach to his meaning till you know his station in life and habits. So with regard to various other terms belonging to ordinary life. Suppose a man speaks of another as a sound politician, can you have the least idea what he means until you know who the speaker is. It would have one sense if uttered by me; it would have a totally different sense if uttered by my learned friend the Attorney-General. So if a man uses the term "divine worship" or "religious worship," or "the propagation of religion," those are terms which are essentially relative; they are relative to the speaker, and their construction depends upon the speaker, and their interpretation will so essentially belong to, and is so inevitably connected with, something which belongs to the speaker's manners, opinions, and habits, that till you know what those manners, opinions, and habits are, you do not know what the word means.

Will any man say, that if a Jew bequeaths a sum of money for the promotion of religious worship, or for the benefit of religious worship, that that is to be applied to the Metropolitan Church Building Society? Now that the Roman Catholic religion is upon the footing on which it is, if a Roman Catholic, whose charities are placed now by law upon the same footing as those of Protestant Dissenters, leaves a sum of money for the purpose of religious worship, would it not be a disgrace and an offence against common honesty and common sense, in such a case, to contend that it was to be applied to Protestant purposes? You must construe it according to the intent and meaning of the person who utters the words which are to be construed, and which can only be construed with reference to himself, because they are matters of individual habit and opinion.

Now the cases upon the reception of evidence are brought together in a most excellent treatise, with which your Lordships are familiar, a collection made by Mr. Wigram, which contains, indeed, everything which requires to be said or known upon the subject, as far as I am aware, as he cites the well-known authorities upon it. Now the fifth proposition which he states, at page 36 of his book, (I am reading from the second edition, which I believe is the last,) is this:

"For the purpose of determining the object of a testator's bounty, or the subject of disposition, or the quantity of interest intended to be given by his will, a Court may inquire into every material fact relating to the person who claims to be interested under the will, and to the property which is claimed as the subject of disposition, and to the circumstances of the testator and of his family and affairs, for the purpose of enabling the Court to identify the person or thing intended by the testator, or to determine the quantity of interest he has given by his will. The same, it is conceived, is true of every other disputed point, respecting which it can be shown that a knowledge of extrinsic facts can in any way be made ancillary to the right interpretation of a testator's words." I believe every portion of the rule so laid down is supported by authority.

He cites, among other cases, the very well-known case of Doe *v.* Langton, in 2nd Barnewell and Adolphus, where Lord Tenterden thus expresses himself in construing the will: "Our opinion in this case is founded upon the will of the testator, together with such only of the extrinsic facts as furnish the date of the purchase and the situation of the lands in question, and show that William Gore Langton, the defendant, was the eldest son of the testator, and had married a lady of fortune and taken her surname of Langton in addition to his own, and that the ancient seat of the Gore family was at Barrow, the eldest son residing at Newton Park; and all these facts were undoubtedly admissible in evidence." And he goes on to state, "The extrinsic facts in this case leave no room to doubt that the testator intended his newly-acquired property to pass by his will."

In the same page, the case of Lowe *v.* Lord Huntingtower, in 4th Russell, 532, is also mentioned in a note. There Lord Eldon sent the very point to the Judges; the Vice-Chancellor of that day sent the case to the Judges, stating certain facts, and the Judges sent an answer. It came by appeal before Lord Eldon. Lord Eldon thought that the Vice-Chancellor had gone too fast, and remodeled the case in this way. He desired it to be sent back to the Judges with this preliminary question: Were the facts legally admissible in evidence, and if not admissible in evidence, did that make any difference in their opinion? The Judges had it argued before them, and sent back their opinion that all the extrinsic facts relating to the state of the family were admissible in evidence, and that having considered them as admitted in evidence, their opinion remained as before.

I will not fatigue your Lordships by going minutely through the cases cited in this treatise; but I cannot avoid citing some expressions from some learned Judges which are here referred to, who have had this sort of point before them. In the case of the Jersey lessees, in the Exchequer Chamber, this principle was a good deal discussed, and in the course of the judgment delivered upon that occasion, Mr. Baron Bayley, then a Judge of the King's Bench, in 2nd Broderip and Bingham, 553, expressed himself thus: "The evidence here is not to produce a construction against the direct and natural meaning of the words, not to controul a provision which was distinct and accurately described, but because there is an ambiguity upon the face of the instrument, because an indefinite expression is used, capable of being satisfied in more ways than one; and I look to the state of the property at the time, to the estate and interest the settler had, and the situation in which she stood with regard to the property she was settling, to see whether that estate or interest or situation would assist us in judging what was her meaning by that indefinite expression." I have done that which was not very needful, considering the accuracy of my learned friend Mr. Wigram—I have verified that citation by a reference to the book.

In the same page of Mr. Wigram's book, page 59, he refers to the case of Doe *v.* Martin, reported in 1st Neville and Manning, where the language of one of the learned Judges by whom your Lordships are at present assisted is this: "I think facts and circumstances relating to the subject of the devise are admissible, such as possession by the testator, the mode of acquiring local situation, and the general state of the testator's property. The Court may take such

s into consideration, so as to put themselves in the place of the testator, hen see how the terms of the will affect the property." So, in a case be-Lord Chancellor Brougham, the case of Guy v. Sharpe, in 1st Mylne and , page 602, his Lordship says: "I may, however, observe generally on the tion of extrinsic evidence, with a view to aid the construction and give ex-tion, not to alter or controul the sense, a purpose for which it can never be ed, that there is a manifest difference between the declarations, whether l or written, of a testator, and the proof of facts and circumstances by the ledge of which the Court, when called upon to construe, may be placed in ame situation with the party who made the instrument, and may thereby e better able to understand his meaning."

shall trouble your Lordships but with, I think, two more references; one the judgment or rather speech of one of the learned Judges also, I believe, in the House, who attended as assistant to Lord Brougham in the case of r v. Travers; a very extraordinary case of a will made by an Irish gentle-in which the county was mistaken, and a sheet was left out, and the t had to deal with those difficulties as well as it could. The case is re-d in the 8th volume of Mr. Bingham's Reports, and it is impossible to read judgment, which had the concurrence of Lord Lyndhurst as well as of the ed Judge who pronounced it, without seeing that it affirms every proposition h I have taken the liberty of stating to your Lordships.

is rule is put also in a very pointed way by a learned Judge now present, hich I have before referred, in the case of Doe v. Watson, which is in the Barnewell and Adolphus, 8vo, where the expression is, which seems to me m it all up, "Such evidence is admissible to show, not what the testator ded, but what he understood to be signified by the words he used in the " That has always appeared to me to express the rule very pointedly and clearly.

ow, without fatiguing your Lordships more at length, having referred your ships to those cases, to which I may add the very useful discussion which ase of Piecroft v. Gregory received, which is reported in 4th Russell, as to h I think I should do wrong if I troubled your Lordships by any additional nce or comment,—the words here are "poor and godly ministers." Now ut stating, at present, or repeating any comment upon Mr. Wellbeloved's his co-trustees' interpretation of the word "poor," which means a minister e Gospel with an income to the extent of 300*l.* a year, and to go on to the "godly," it is plain, as I have stated, that your Lordships cannot interpret that means till you know who and what the speaker was.

is essentially a relative term. That which is godly in one sense is ungodly nother. That which is godly to Unitarians is ungodly to Christians. That h is godly to a Turk is ungodly to persons of a totally different persuasion. a term that includes an unavoidable and essential reference to the person uses it, because it is a term that can only relate to his own opinions and s own modes of thinking, as testified by his habits of acting; and therefore one of those indefinite expressions (to borrow the language of Mr. Baron ey) as to which there is not only a right to give evidence, but one the con-tion of which is really impossible without evidence. You are acting in the , just as if you had to expound a will in a foreign language without know-t, until you arrive at the meaning which can only be derived from the habits position of the person who uses it. There is in this case also the further nstance, that beyond its essential reference to the habits and modes of ting and speaking of the person who uses it, there is also the use of the l at a period of time considerably remote from our own, when there may been, and in many instances undoubtedly was, a mode of speaking and a of expression with which we are not now familiar. The fashion in words, ell as in dress and in other matters, changes importantly. Words used in est societies and by the best-educated persons in the reign of Queen Anne now either totally out of use or applied to subjects and matters essentially

different. In considering, therefore, an instrument made a great number of years ago, we are not to limit ourselves to the consideration of what is the meaning of the term as at present used, but we are to consider what was the meaning of the term according to the ordinary use of language at the time when it was used.

My Lords, I find that an eminent divine has expressed himself upon that subject, as well as upon the evidence in general applicable to language, with a precision and in a manner which I think would have done great credit to any lawyer, I mean Waterland: I am reading from the 3rd volume of Bishop Van Mildert's collection of his works, page 258: "But first let me premise a few things in order to give the reader a clearer idea of the true state of the whole case. It is to be considered that Scripture consists of words, and that words are but signs, and that common usage and acceptation is what must settle their meaning. And when anything comes down to us in a dead language, as Scripture now does, the customary use of words in that language at the time when they were spoken or written must be the rule and measure of interpretation, only taking in with it the drift and intention of the speaker or writer, so far as it may be certainly known or probably presumed from evidences or circumstances." Now, my Lords, substituting here the word "change" for dead, applying what he has said of a dead language to a language which by a course of time and changes of fashion has changed in its use, I apprehend that nothing could be more appositely, clearly, or properly expressed than that learned divine has there expressed it.

Now, my Lords, to take the latter branch of these observations first, before I come to the more extended and more important view of what were the opinions of Lady Hewley, I would refer your Lordships upon the meaning of the word "godly," as generally used at that time, to pages between 91 and 99 of the Respondents' Appendix; it begins on 92, the deposition of Dr. Pye Smith. My Lords, the whole is important, but I allude particularly to what is in the latter part of page 93: "That from his acquaintance with various publications he can state his belief that the words or terms 'godly persons' and 'godly ministers' or 'godly preachers,' were, in the belief of deponent, adopted, used, or employed in the conversation and writings and publications of the time in the last foregoing interrogatory mentioned, by the Nonconformists or Protestant Dissenters, for the purpose of describing or designating Dissenters or Dissenting Ministers and Preachers generally; but deponent cannot say whether the terms 'godly persons,' 'godly ministers,' and 'godly preachers,' were used for the purpose of distinguishing Dissenting Ministers and Preachers from Preachers of the Established Church, but that the said terms were ordinarily applied to Dissenting Ministers and Preachers, and by such ordinary application became to a considerable extent terms of distinction between them and the Ministers of the Establishment: that the term 'godly' became a term of reproach by profane persons against Dissenting Ministers and their adherents. Saith, that there is, and there is commonly reputed and believed to be, a class, sect, association, or denomination of Protestant Dissenters from the Established Church who are commonly called Unitarians," and so on.

Then, my Lords, I pass on, not to encumber your Lordships with more than belongs to this particular part of the argument. The next witness is Dr. Bennett, an eminent author, as your Lordships know, upon the subject, and what he says upon this particular part is early in page 95, and he speaks upon the subject to the same effect as Dr. Pye Smith, stating, "That the word or terms 'godly persons' and 'godly ministers,' or 'godly preachers,' were adopted, used, or employed in the conversations and writings and publications of the time, in the last foregoing interrogatory mentioned, for the purpose of describing or designating Dissenters and Dissenting Ministers generally: that the terms or words were used for the purpose of distinguishing Dissenting Ministers and Preachers from Ministers of the Established Church, for Ministers of the Church of England would have regarded it as a slur to have been called Preachers at all, the

argy being with them considered more important than preaching, while the enting Ministers had no Liturgy, and considered the preaching of the Gos- as their most important duty; and the dissipation into which the nation ran er the Restoration caused the Nonconformists to be branded with the term odly' by way of reproach." My Lords, I am sorry to say that that is not exampled in this age; the profane are now apt to use the words "saint" and vangelical" in a sense extremely different from their ordinary meaning, and culated to indicate a very different meaning.

Lord WYNFORD.—Lady Hewley would not use it in that sense?

Mr. KNIGHT BRUCE.—No, my Lord, she would have been one of those w called "saints" or "evangelical," and she would have used it undoubtedly a term of the highest praise; but it is like many other terms that are used th as terms of reproach or praise, according to what the different opinions or ns of those using the phrases may be.

Then, my Lords, Mr. Turner follows. I do not know that he speaks to this rticular point. Mr. Manning Walker speaks to the same effect in the middle page 96, and I think that that is the whole or principal part of the evidence plied to that use of the term, and, as your Lordships are aware, it is the only idence upon that subject: but, my Lords, the singular part of this Case is, at this is a case in which we have been told that no evidence is to be received. he Case has been opened on the part of the Appellants as one in which Lady lewley was a Nonconformist, and in which she intended the benefit of her harity for those who had been called Presbyterians: where, without the re- ption of evidence, the Appellants get that, it is impossible to say: arguments ore pointedly *allegantes contrarii* than my learned friend's arguments have en in the present case, certainly it never has occurred to me to hear. Then, y Lords, with regard to the evidence of Lady Hewley's opinions, the evidence f her opinions is partly contained in other parts of that class of depositions hich I have just been bringing under your Lordships' attention between pages 8 and 98. Your Lordships may take it for granted that all those learned per- ns speak to the same effect upon that subject, and I will only read one as a mple of what they all say. It is in Dr. Pye Smith's evidence, at the bottom f page 92: "That the word or term Presbyterian, at or about the time in the at foregoing interrogatory mentioned, was commonly used as the name or de- ription of a sect, or class, or denomination of English Protestant Dissenters: at from his acquaintance with the writings of the time, as well as later pub- cations, he had the best reason for believing that the religious belief of such ct, class, or denomination of Dissenters was not Unitarian, but Trinitarian: at it differed in religious belief from the class of English Protestant Dissenters f those times called Congregationalists, so far as that portion of the class men- ned called the Antipædobaptists or Baptists was concerned, in the matter nly of infant baptism, but as to every other portion or class mentioned, in- luding the Antipædobaptists or Baptists, merely in reference to the mode of dmission to or exclusion from the Holy Communion; for the whole class of nglish Protestant Dissenters was Trinitarian in doctrine, there being in fact no ect or party called Unitarian Dissenters then in existence." He goes on to firm that in other terms, and to adduce other evidences of it.

Dr. Bennett is to the same effect; in the middle of page 94 he says, "That he English Presbyterian Dissenters did, at or about the time of the foundation f these Charities, profess faith in God the Father and in Jesus Christ his ternal Son, the true God, and in the Holy Spirit, One God, blessed for ever- more; and that so far from being deniers of the doctrine of the Blessed Trinity, s it is declared in the articles of religion, it would have been considered as a rous calumny to call one who denied the doctrine of the Trinity a Presbyterian, nd the Presbyterians themselves would have protested against it as slanderous nd injurious to the reputation of that body; nor would the Presbyterian mi- isters at the time of Dame Sarah Hewley have consented to ordain to the work f the ministry any man who denied the doctrine of the Trinity, as set forth in

the articles of religion. Saith, that at or about the time of the foundation of these Charities, there was no difference in the doctrinal sentiments or religious faith of the Presbyterians and Independents or Congregationalists, but the writings of the one body were equally acceptable to the ministers and religious persons of the other. The Assembly's Catechism, which is the work of Presbyterian divines, was approved of and employed by the Independents or Congregationalists; the ministers of the one denomination preached for those of the other; it was but little known to which denomination a minister belonged, for their mode of conducting worship was alike; and as their doctrinal sentiments were identical, and they seldom referred to the points in which they differed in regard to discipline, the public knew little of their differences, and the Presbyterians being the larger body, they were all called by that name." And then, if your Lordships will allow me, without troubling you at greater length with the others, only to read the concluding paragraph of this extract from Dr. Bennett's evidence: "That there is a class, sect, or denomination, usually calling themselves Unitarians, but who used to be called Socinians, and who are often by the ignorant vulgar called Presbyterians. The term Unitarians has been chosen by themselves, and is now generally conceded to them by courtesy, to the sacrifice of theological accuracy, for it assumes that they alone believe the Unity of the Deity, though Trinitarians declare their belief in the Divine Unity; but as the term Socinian is now generally offensive to those who used to be called by the name, and as they declare that they do not agree with Socinians in everything, the term Unitarian has been suffered to pass current; but as those who are called Unitarians generally occupy Meeting-houses that were built for Presbyterians, and as the present occupants can legally hold them only under the profession of being Presbyterians, they for a long while called themselves by that name; and thus among the ignorant the term Presbyterian has been supposed to be synonymous with Unitarian, greatly to the discredit of the real Presbyterians and to the confounding of all theological distinctions." And so all the witnesses, all being unopposed, the Defendants being challenged to go into evidence upon the point, and having given none.

Now, my Lords, having shortly called your Lordships' attention to only a part (I beg your Lordships to remember) of the great and various body of evidence to the same effect that there is in this case, I will now call your Lordships' attention to a few documents beginning at Lady Hewley's Will, which is awkwardly paged in a manner that continually perplexes me, in consequence of the repetition of the figures with stars. Lady Hewley's Will is at page 74 with an asterisk. It begins thus: "In the name of God, Amen. I, Dame Sarah Hewley, of the City of York, widow, having first committed my immortal soul into the hands of my Dear Redeemer to be washed in his blood, and made meet to be partaker of the inheritance of the saints, and leaving my vile body to be disposed of—" "I give so and so;" and she, my Lord, appoints Dr. Colton, of St. Saviour Gate Chapel, which is the chapel she frequented, (that is at the top of page 76 with an asterisk,) to be one of her executors. Dr. Colton is known to have been an eminent Presbyterian, and therefore Trinitarian, of that time, intimate with the leading persons of that day.

My Lords, Dr. Colton's own will is here in evidence; it is the next document: "I, Thomas Colton, of the City of York, an unworthy minister of Jesus Christ, being sensible of the frailty of human life, and in a disposing capacity of body and mind, do make this my will and testament, revoking all former wills. First, I commend my immortal soul into the hands of Almighty God, as of a faithful Creator, which I beseech him mercifully to accept, looking upon it not as it is in itself (infinitely polluted with sin), but as it is redeemed and purged with the precious blood of his only beloved Son, and my most sweet Saviour Jesus Christ, in confidence of whose merits and mediation alone it is that I cast myself upon the mercy of God for the pardon of my sins and the hopes of eternal life."

Then, my Lords, comes, rather out of the order of chronology, the same Dr. Colton's funeral sermon for Lady Hewley, which is admitted by Mr. Wellbe-

ved to have been so, and proved as far as the fact can be proved, but it is ad-itted in the Case. After praising her piety and charity in the very highest rms, he goes on and concludes thus: "After all these, she thought herself an nprofitable servant; and when any have told her of some good work she had ne, she would sometimes answer with divine Mr. Herbert, 'Yes, if it were rinkled with the blood of Christ.' She thought none had more need of the erits of a Saviour to justify and save her. Her finishing and most ardent reathings were into his bosom, 'Come, Lord Jesus, come quickly;' and they ere now met, never to part more. The loving Jesus and the humble believing ul are now met in eternal embraces. Heaven had often heard of her before, y the multitudes of petitions that daily crowded thither, but now heaven has ceived her longing, sanctified soul, and there she lives without pain and sick-ess, and without sin. There she sees and loves and adores and enjoys her God nd Saviour as she would;" using the terms "God" and "Saviour," as your ordships know, in the same sense which is established to be the sense of the ame union of the two words in a verse which has been the subject of very fre-uent comment and observation,—the 13th verse of the 2nd chapter of Titus. here has been much commentary both upon the Greek phraseology, *τοῦ μεγάλου Θεοῦ καὶ σωτῆρος ἡμῶν Ἰησοῦ Χριστοῦ*, and the manner in which that is trans-ated into English, and particularly upon the word *ἐπιφάνεια*, translated "ap-earance" in our version, as applied to the same person, clearly and evidently howing, as it is admitted on all hands that it does show, an identity of person, nplied and expressed in the words "God" and "Saviour."

My Lords, before I proceed to Mr. Bowles's Catechism, I beg your Lord-hips to turn on to page 80, where you will see the license of St. Saviour Gate hapel, in 1693, when the denial of the Trinity was, whether rightly or not, rohibited by the severest statutary penalties.

My Lords, we then come to Mr. Bowles's Catechism, that is prescribed to e read by the almswomen. The rules and regulations of the Almshouse, which rescribe the reading of this Catechism, are in page 10 of the same Appendix, nd I would beg to refer your Lordships to page 12, and will your Lordships orgive me, before I read the two only parts which bear upon this, to bring to our Lordships' recollection the length of time (I do not say too long, consi-lering the importance of the subject,) with which your attention was occupied n discussing the objection, an alleged objection, true to a great extent, of the Nonconformists of that time to creeds. It was particularly and pointedly in-isted upon by my learned friend, the Solicitor-General, in his elegant and able nd learned address to your Lordships. I do not know why my learned friend hould have thought it worth while to do that in a case where we find that in he very almshouses, instituted by this lady, she says, "Let every almsbody be one that can repeat by heart the Lord's Prayer, the Creed, and Ten Command-ments, and Mr. Edward Bowles's Catechism." At all events, unless this lady was particularly hostile to old women, and unless she meant to drench or choke them with that which was extremely unpleasant to herself, an attempt which you cannot impute to this pious and excellent person, she at least could not be a person greatly abhorrent of creeds; and yet a large moiety of my learned friend the Solicitor-General's argument turned upon this, that creeds were so generally abhorrent to the Nonconformists of that day, including of course Lady Hewley, (the consequence is another thing, I shall come to that by and by,) that she was to be treated as a Latitudinarian. "Let every almsbody be one that can repeat by heart the Lord's Prayer, the Creed, and Ten Command-ments, and Mr. Edward Bowles's Catechism. Let all the almspeople, when not disabled by weakness, duly repair to some religious assembly of the Pro-testant religion every Lord's day, forenoon and afternoon, and at other oppor-tunities, to attend the ordinances of God." My Lords, it will be my business in another part of my argument to show that at this period no person used even the term Protestant as inclusive of those who denied the Trinity. I merely call your Lordship's attention to it now, by way of anticipation, for the purpose of

reminding you that the term Protestant is used in these rules of Lady Hewley's almshouses; they are to repair to some Protestant religious assembly, and this at a period when the denial of the Trinity was prohibited under the severest penalties that the Legislature could enact upon such a subject, and they are to repeat by heart—: it is admitted on all hands that the repetition does not mean the repetition of a parrot, but repetition for the purpose of acknowledging a profession in the belief there repeated. Now, your Lordships observe that the expression here is "the Creed;" she does not say the Apostolic Creed, but I suppose it must be considered to be that which is called the Creed simply, rather than the Nicene or Athanasian; but she evinces by that expression a familiarity with the Creed, as something of which she was constantly hearing. The expression which she uses is "the Creed," as though it were a matter familiar to all persons; and I believe there is no creed which is so described without any prefix to it, except the Roman or Apostolic Creed, which is read in our Morning Service, as to which——

Lord WYNFORD.—And to which no Presbyterian at that time of day would have had any objection?

Mr. KNIGHT BRUCE.—None at all, my Lord; but the Unitarians could not without impropriety use it: upon that I have a word to say by and by.

Lord WYNFORD.—Do they use it in an altered state?

Mr. KNIGHT BRUCE.—I do not know how they alter it, or whether they alter it.

Lord WYNFORD.—There is a creed used by Unitarians.

Mr. KNIGHT BRUCE.—Mr. Aspland's Creed; that is quite a different thing; but this lady did not mean Mr. Aspland's Creed, I suppose; it had not existence then: nobody can doubt that she meant by the Creed, the Apostolic Creed.

Lord WYNFORD.—As it is read in the Church.

Mr. KNIGHT BRUCE.—As it is read in the Morning Service; and it is a more simple Creed, not going into that explicitness and detail into which the Nicene Creed, the Creed which was made at Constantinople, entered on account of the heresies of the Greek Church; therefore that was more particular, because it was directed to the suppression of particular heresies which were prevalent in the Church at that time, which was not the case in the Roman Church. She requires that they shall repeat by heart the Creed, the Ten Commandments, and Mr. Edward Bowles's Catechism.

Now, my Lords, we have examined a great number of witnesses. I will not fatigue your Lordships by reading them through upon the point whether Mr. Edward Bowles's Catechism is Trinitarian or not; there is no evidence upon the other side. It is a question of science. Now you must listen to scientific witnesses, as upon any other matter of science; and the witnesses, one and all, men of great learning and information, who have been conversant with the subject all their lives, depose distinctly that the Creed is assuredly Trinitarian. I therefore need not trouble your Lordships, and I mean to do it but very shortly, with particular references to some of the citations of Scripture made in the margin of that Creed, and printed with it; but your Lordships would be satisfied undoubtedly with the evidence of the men of science who have been examined upon the subject. Now, at page 78 with an asterisk, the doctrine of Original Sin is plainly inculcated towards the middle of the page.

Lord LYNDHURST.—Is that Bowles's Catechism you are upon?

Mr. KNIGHT BRUCE.—Yes, my Lord.

Lord LYNDHURST.—You made use of the word "Creed;" you said that the Creed was Trinitarian; you meant that Bowles's Catechism was Trinitarian.

Mr. KNIGHT BRUCE.—I am obliged to your Lordship for correcting me; I meant the Catechism. I say that the Creed is also decidedly Trinitarian; but your Lordship is quite right, I was not meaning to speak of the Creed at that moment. Towards the middle of the page: "*Q.* What way hath God ap-

?—*A*. Only by Jesus Christ. *Q*. What is Jesus Christ?—*A*. The Son manifest in the flesh." And opposite to that, my Lords, there is a re- to a verse celebrated in controversy, the 16th verse of the third chapter First Epistle to Timothy, "Great is the mystery of godliness." The has been whether the word which has been translated "God" is not in nal 'Oς. My Lords, it is not suggested, I believe, that Lady Hewley was scholar. Schleusner and Griesbach were both born after Lady Hewley e two authorities that have been referred to by my learned friend the y-General. Sir Isaac Newton, indeed, wrote upon the subject; but Lady Hewley read controversies upon Greek does not appear; but what pear, and what your Lordships would not receive any evidence upon, is e of the received version in use at the time. My Lords, I have asked nished with a Bible of the received version, printed in 1669, and I have e a Bible of that date printed by the printers to the King's Most Ex- Majesty. I thought it best to have a Bible of that time to read from, to show what that Bible was; that of course would be the Bible used Hewley's time, and, as your Lordships would expect, the version agrees at we have now. "And without controversy great is the mystery of s: God was manifest in the flesh, justified in the Spirit, seen of angels, d unto the Gentiles, believed on in the world, received up into glory." r, therefore, the correct text be 'Oς or Θεος, though I believe among here can be no doubt which way it is, I am not going to attempt to to that learning to which I should be very unequal; it is sufficient for how what the received version then was; taking it as it there stands, the "God," and the word being "God" can leave no manner of doubt on stion as to the result to be drawn from that verse.

ords, the reference in Bowles, immediately before the 1st of Timothy, latians iv. 2. I consulted that text and could not discover anything ade that text bear upon it; it is a misprint for Galatians iv. 4., the Galatians being, "But when the fulness of time was come, God sent s Son, made of a woman, made under the law." My Lords, I find that it itself in the Catechism is accurate, it is only a misprint in the Case, in that from which the misprint is taken. Now your Lordships will be ough to recollect for whom the Catechism is designed: it is a plain and atechism, designed for young and uninstructed people, and the mottos Catechism are, "I have fed you with milk, and not with strong meat." ve need that one teach you which be the first principles of the oracles" And accordingly the scientific witnesses describe it as an elementary m, designed for young and uninstructed people. I need not, therefore, insist upon this point; that must be the verse to which allusion is made; at be so, that puts an end to all reasonable question upon the subject.

ords, it does not simply rest upon that; but if your Lordships will look references, particularly those opposite to this question, "What is it to To rely on Jesus Christ, and him alone, for pardon and salvation ac- to the Gospel;"—the references there are two, Ephesians ii. 8, and John which are also passages with regard to the doctrine of the Trinity, or s necessarily following from it, and upon which no doubt or question e.

my Lords, there are some other remarkable instances with reference to Testament which deserve attention in this way, that in reference to our passages from the Old Testament are given speaking of God; and that me more strikingly and powerfully to evince the feelings and opinions composer of the Catechism than even any reference to the New Testa- My Lords, I am at page 79: "Are not the Ten Commandments the dments of Christ? Yes, they are special part of God's word, which is a ife:" and then there is a reference to the 19th Psalm and the 7th verse, this, "The Law of the Lord is perfect, converting the soul. The tes- of the Lord is sure, making wise the simple." That, my Lords, is put

as the proof of this position, "Are not the Ten Commandments the commandments of Christ? Yes, they are a special part of God's word, which is a rule of life." But the more remarkable references to the Old Testament are the references to Isaiah. My Lords, in the middle of page 78 there is a reference to the 10th verse of the 50th chapter of Isaiah upon this question and answer: "What is it to believe? To rely on Jesus Christ, and him alone, for pardon and salvation, according to the Gospel." The 50th chapter of Isaiah, 10th verse, is this: "Who is among you that feareth the Lord, that obeyeth the voice of his servant, that walketh in darkness, and hath no light? let him trust in the name of the Lord, and stay upon his God." That is the verse in support of this position in reference to our Saviour.

But there is another reference to Isaiah which has struck me as still more remarkable; it is in page 79: "How shall we obtain strength from Christ?" There the 40th of Isaiah, 31st verse, is referred to: "But they that wait upon the Lord shall renew their strength, they shall mount up with wings as eagles, they shall run and not be weary, and they shall walk and not faint." The manner of printing it shows that the term is Jehovah in the original, which indeed we ascertained upon the former occasion. It has struck me that the references for this particular position to the Old Testament are even stronger, if possible, than the references to the New.

My Lords, we cannot much wonder after this that the learned witnesses who have been examined upon this subject should declare the Catechism to be Trinitarian.

Now, my Lords, after having read those exhibits to your Lordships, I would call your attention to the same Appendix, from 87 to 91, which I do not think I have yet pointedly called your attention to. They go, among other things (I am beginning at page 87), to prove the Catechism to be a Trinitarian catechism: the reasons are particularly given in page 98. Dr. Pye Smith says, "That the said Catechism of Mr. Bowles could not in his judgment and belief be used or accepted by Unitarians, because its teachings plainly exclude such persons as Unitarians from salvation." He says, "He is enabled to speak positively that Mr. Bowles was a Trinitarian." Then he speaks to tradition, with reference to the religious sentiments of those several persons, and refers to Calamy's book, and other persons, with reference to the prevalent opinions of persons of that day; and as far as history is concerned, and as far as tradition goes, as far as your Lordships can rely upon that as matter of evidence, it is a source of information which has been largely drawn upon by the counsel for the Appellants, and which therefore, probably, ought not to be held to be closed against the Respondents; and upon that subject all that you hear from those learned persons with regard to what their researches have taught them upon every matter that is a matter for belief, the religious opinions of all those persons are shown to be merely and purely Trinitarian.

But, my Lords, evidence drawn from tradition and universal acceptation and opinion upon this subject is by no means confined to traditional information and to the information from books that we have drawn from the citations of my learned friends on the other side. My Lords, I have now to call your attention to certain books upon my part. Books have been very largely mentioned, opinions have been very largely cited, on the other side. My Lords, I will also try what I can do with a few books, and what I can bring forward to your Lordships upon the subject; and, my Lords, I mean to bring under your Lordships' attention authorities entitled to the greatest reverence and the greatest weight, to prove what were the general opinions and feelings of the Nonconformists of that day, to prove to your Lordships that Unitarianism, as it is called, was an abhorred thing, that the imputation of it was considered as a stigma in society (I do not say justly) as well as by law. I entreat your Lordships to consider that in what I say I am dealing with the opinions of the time, I am not presuming to offer or suggest any opinion of my own. Whatever I say upon the subject must be only taken as exhibiting or attempting to illustrate

the opinions of the time. My own it is unnecessary and would be impertinent to bring forward; but I mean to show your Lordships that, according to the opinions of the time, the denial of the Trinity was considered in the light I have stated. I mean to show your Lordships that, as language was used at the time, the word "Christian" was held not to include a person who denied the Trinity; that, according to the usage of language at the time, the word "Dissenter" was held not to include persons who denied the doctrine of the Trinity, as it does not include a Jew or a Mahometan; that, according to the language of the time, the word "Protestant" did not include a person who denied the Trinity, because everything not Popish is not necessarily Protestant. My Lords, the authorities applicable to prove the general sense and views of the Nonconformists of those days are very much mixed with these authorities, which I shall have the honour of bringing under your Lordships' attention; and I am not sure that after I have exhausted those three heads, under which I have imperfectly and defectively to arrange some of the evidence which I have attempted to collect upon the subject, it will not relieve me from the necessity of troubling your Lordships with more citations upon the general evidence of the opinions of Nonconformists of the day. My Lords, I first of all desire to show your Lordships, that, according to the habitual mode of expression and the opinions of the time of which we are speaking, Socinians, or deniers of the Trinity, were not considered as Christians. My Lords, I first of all upon that head present to your Lordships the preamble of the Blasphemy Act, which still exists for certain purposes, and which I have already brought under your Lordships' attention, and to which Lord Eldon has particularly alluded. The language of the Blasphemy Act declares the sense of the legislature and of the community at the time to have been, that the denial of the Trinity was contrary to the truth of the Christian religion. My Lords, I would next bring under your Lordships' attention a passage from the eminent Mr. Howe's work, a work called "A Calm Discourse upon the Doctrine of the Trinity," (Mr. Howe was one of the most eminent and eloquent among the Nonconformists of that day,) which I will read from the volume of Waterland which I have before referred to. I have not consulted the work itself, but I have been referred to the passage, not only by an eminent divine now living, but by those works of Waterland in particular. My Lords, I am reading from Bishop Van Mildert's collection of Waterland's works, page 22. Mr. Howe, who was, as I have already said, and is universally acknowledged to have been, an eminent member of that community and class to which Lady Hewley belonged, as quoted by Waterland, thus expresses himself: "That there is a Trinity in the Godhead of Father, Son (or word), and Holy Ghost, is the plain obvious sense of so many Scriptures, that it apparently tends to frustrate the design of the whole scriptural revelation, and to make it useless, not to admit this Trinity or otherwise to understand such Scriptures." That is the language of Howe, with whom it is vain to pretend that Lady Hewley did not agree in her opinions, even in the admissions upon the other side.

My Lords, there is a remarkable passage which is to be found in a collection that the Appellants have laid before your Lordships in a book bound in blue or covered with blue paper, which they call Proofs and Illustrations. It has struck me very forcibly as remarkable that it should have found its way into this collection: the collection is not paged except in the margin. I believe that your Lordships are in possession of that collection, a sort of supplemental appendix of the other side; and at page 112, in the margin, there is a citation from the work of Mr. Bennett, an eminent writer of the Nonconformists, from his book called "Irenicum, or a Review of some late Controversies," published in the year 1722; at page 112 they give us this reference from the book: "In short, Christians are I think agreed in such articles as these, which may be reckoned among the fundamentals: that God is, and is a rewarder of them that diligently seek him; that the Scripture is the word of God; that Jesus of Nazareth is the promised Messiah, and is come in the flesh; that there is but one God and yet

there are three persons, Father, Son and Holy Ghost, to whom the scripture ascribes divinity." The author of their own citation, in a very eminent work of that time, states that as a proposition in which Christians are agreed, he is not here alluding to matters of difference, but those in which every person bearing the title of Christian is agreed.

My Lords, lower down in the same page, there is one of the most characteristic observations that I have ever met with in the whole course of my life. Having inserted that passage, your Lordships will see this observation at the end of the page,—"Under this head," say the collectors of this passage, speaking of Bennett, "he shuts out the doctrine of the Trinity from the class of fundamentals."

After this passage, which is given by themselves, what do they call shutting out? This is what they call it. "The same remark may be applied to the doctrine of the Trinity; as it has been a subject of dispute, and been stated in several and different schemes, I can't think it (the disputed part) has the importance of a fundamental. Men may be equally sincere, equally pious and good, and equally accepted of God, notwithstanding their different sentiments on this controversy. Nor is it plain enough to pass for a fundamental; not easy enough to be understood, nor clearly enough revealed. Let any of our schemists go through our congregations, whether among Churchmen or Dissenters, with their draught of this doctrine and a proper number of queries in their hand relating to it, and I'm mistaken if they don't find upon inquiry by the answers they'll get, either that their doctrine is not fundamental or that the generality even of the best character for religion are no Christians. Let them ask what they understand by Hypostasis or person? or what is their notion of a person in the Trinity? How they understand it that they are three and yet but one? What the difference between person and personality? What's meant by the eternal generation of the Son? and procession of the Holy Ghost? (if some have learnt any terms of speaking from catechisms, confessions, &c., that may pass with the Examiner for Orthodox, yet if they have not ideas and notions answerable to them, as I am confident is the case with respect to many, only can repeat words they understand not, they are no wiser than their neighbours who want the knowledge of their sounds:) let them, I say, make the scrutiny in most congregations in England, and I am afraid if understanding and orthodoxy here be the test of Christianity, we shall lose the company of the best part of our communities." To be sure, and that is the very point upon which all the learned divines of that day insisted, that men were not to trouble their minds or to make it a matter of dissension or curious investigation, how it was, in what form or mode it was, or how the mystical and inconceivable union was to be expressed; the fact of the union was to be believed, the manner of accounting for it was not to be attempted by the human understanding,—that is what Mr. Bennet means here, that is what every great writer means upon the subject. Trouble not yourself, he says, by fanciful and curious modes of describing in language which must necessarily break down under the subject, or attempt with the finite ideas which belong only to humanity to describe that which belongs to another sphere of being; be satisfied with humbly and firmly believing it, and do not attempt to pass the boundary prescribed to the human powers of definition. Does he here mean to say that the doctrine is to be disbelieved? on the contrary, the whole spirit as well as letter of the passage is found and based upon this, and in this, that the Trinity as a fact is to be believed. How does he begin? "The same remark may be applied to the doctrine of the Trinity; as it has been a subject of dispute and been stated in several different schemes," and in order to prevent a mistake, he takes care to add in a parenthesis, "I cannot think it (the disputed part) has the importance of a fundamental." What he says is, Men may be equally sincere and good Christians, in whatever manner their imperfect use of language or their imperfect ideas or their imperfect construction may enable them to account for it; but does he anywhere say that that doctrine is not to

be believed? does he anywhere intimate that that is to be struck out of the work which he had before stated? "Christians are, I think, agreed in such articles as these, which may be reckoned among the fundamentals, that God is, and is a rewarder of them that diligently seek him, that the scripture is the word of God, that Jesus of Nazareth is the promised Messiah and is come in the flesh, that there is but one God, and yet that there are three persons, Father, Son, and Holy Ghost, to whom the scripture ascribes divinity." My Lords, this one line is a sample of the whole book and of the whole argument, "under this head he shuts out the doctrine of the Trinity from the class of fundamentals." That is a statement (I use the expression in no offensive sense) utterly untrue, (in the sense of being utterly erroneous and unfounded) and it is a sample of what you have heard in the whole argument upon the subject. My Lords, my learned friend Mr. Kindersley has put into my hand the very book from which they have given certain extracts, it is the book of Mr. Benjamin Bennett; I read from the edition of 1730. "The Bible makes God known in his nature, as the one God, the living and true God, infinitely wise, powerful, just and good, the blessed and holy potentate, who alone hath immortality, whom no man hath seen or can see; it makes known the glorious mystery of the Trinity, represents the three divine persons a dispensation of brightness and grace that no book in the world can pretend to give an account of but the Bible."

My Lords, the next authority I have in my list in order, though not in chronology, is a passage that I have met with in the works of a very eloquent and distinguished writer, the late Mr. Robert Hall; I am reading from the 5th volume of the collection of his works by Dr. Gregory, page 33; it is in a most eloquent treatise on the spirit and tendency of Socinianism, where Hall says, "by stripping religion of its mysteries, it deprives it of more than half its power. It is an exhausting process by which it is reduced to its lowest term. It consists," that is, Socinianism consists, "in affirming that the writers of the New Testament were not, properly speaking, inspired nor infallible guides in divine matters, that Jesus Christ did not die for our sins, nor is the proper object of worship, nor even impeccable, that there is not any provision made in the sanctification of the spirit for the aid of spiritual maladies, that we have not an intercessor at the right hand of God, that Christ is not present with his saints, nor his saints, when they quit the body, present with the Lord, that man is not composed of a material and immaterial principle, but consists merely of organized matter, which is totally dissolved at death. To look for elevation of moral sentiment from such a series of pure negations would be to gather grapes of thorns and figs of thistles." I only read the passage for the purpose of showing what his view was of the necessary consequences to be derived from those negations which are involved in the doctrines of Socinianism.

My Lords, I would next call your attention to some other pages of the eminent writer whom I mentioned some time ago, I mean Dr. Waterland, the same 5th volume; now Dr. Waterland is here speaking, and your Lordships will take me along with you as using this at present specifically for the purpose of showing the sense with which the words Protestant, Christian, and Dissenter were used, and what is lying before me is part of the general evidence of what the Nonconformists of those days were. Now Dr. Waterland, in his introduction to his work called "The importance of the doctrine of the Holy Trinity," at pages 4 and 5, is speaking of the different opinions which are entertained of the importance of the doctrine of the Trinity, not directly or merely its truth, but the importance of believing in it, and he says, at page 5, speaking of the Church of England, (he cites Dr. Nicholls, who says,) "there is another Arminian doctrine which we avoid as deadly poison. Their assertions that there is no necessity of acknowledging three persons in the divine nature, nor that Christ in particular is the eternal Son of God, this heretical notion our Church abominates and detests, as an heinous impiety, and what was never heard of in the writings of the Primitive Christians." Thus far in relation to our divines of the Church of England. Then Dr. Waterland goes on

thus : "As to the divines of the separation, they are known to have been as zealous as any men could be for the necessity of believing the doctrine of the Trinity, as the sum and kernel of the Christian religion, the basis or foundation of the Christian faith. The testimonies of Mr. Baxter, Mr. Corbet, Dr. Manton and Dr. Bates to this purpose, may be seen at one view in a late writer," and he quotes the preface of Mr. Eveleigh, "to those might be added Dr. Owen," his Vindiciæ Evangelicæ, "and Mr. Lobb, and perhaps many more; in short, all parties and denominations of Christians who appear to have had the truth of the doctrine at heart, or any good degree of zeal for it, have contended equally for the necessity of believing it," "necessity" being in italics, "and have refused communion with the impugners of it."

My Lords, in the same volume, at page 52, Sherlock is quoted by the learned writer, and from "Sherlock's vindication of the defence of Stillingfleet" he thus quotes, which sets the argument in its true light, and which says in other words what Mr. Bennett had said before: "Though it is necessary and essential to the Christian faith to acknowledge Father, Son, and Holy Ghost, to be one eternal God, yet there are a great many subtleties started by over-curious and busy heads, which are not fundamental doctrines and ought not to be thought so. God forbid that all the nice distinctions and definitions of the schools about essence, subsistence, personality, about eternal generation and procession, the difference between filiation and spiration, &c., should be reckoned among fundamentals of our faith. For though we understand nothing of these matters, (as indeed we do not, and it had been happy the Church had never heard of them,) yet if we believe the divinity of each person, we believe enough to understand the doctrine of salvation. And though that fatal dispute between the Greek and Latin Church about the *Filioque*,"—he then goes on to speak of those scholastic subtleties which I have before observed upon in Mr. Bennett's book, exhibiting, and I think rather better expressed by Sherlock than Bennett, what Bennett obviously meant to convey; that though the doctrine of the Trinity was essential, though without it there can be no Christianity, yet the particular subtle mode of accounting or attempting to account for it, was neither a thing fit to be attempted nor encouraged, and above all not to be made the subject of dispute, provided you believe it.

My Lords, I go on to pages 151 and 152 of the same volume, in which he is speaking of the absurdity of requiring a mere acknowledgment of the truth of scripture, without requiring an acknowledgment of the sense in which it is understood; and he says, 'A Valentinian, a Montanist, Muggletonian, or any other wild sectary, by this rule might equally claim Christian communion, provided he does not reject scripture itself and turn Infidel; now a plea which thus manifestly overshoots the mark, ought to be rejected as an absurd plea, like as an argument which proves too much ought to be thrown aside as worth nothing. Those who undesignedly pervert scripture should have something better to plead than their retaining the words of scripture, otherwise their plea reaches no farther than theirs does who industriously do the same thing, for they also retain the same thing; upon the whole, therefore, a man's retaining the bare letter of scripture, while he corrupts the sense, is no sufficient reason for receiving him to Christian communion, for he is not only chargeable with denying the faith as much as if he had rejected the text itself, but with perverting the words and defeating the sense;" and then he cites Tertullian, who says, "Tantum veritati obstrepit adulter sensus quantum et corruptor stilus." He goes on, "I cannot better express this whole matter than a late excellent divine of our Church has done in the words here following," quoting Dr. Rogers, who says, "It is not barely repeating so many words but the assenting to the proposition expressed by those words which Christ requires. The proposition affirmed or denied in Christ's words is the doctrine of Christ. He therefore who will not believe the proposition affirmed in Christ's words ought to be looked upon by the Church as a Heathen and a Publican," and he goes on to the same effect in other words.

My Lords, there are other passages in the work, I do not know that I need

them particularly, I will content myself with referring to pages 172 , in the same book; but as I have the book open before me, I may as d to your Lordships a citation of Waterland's from an eminent writer 7th century, who seems to me to have had a kind of prophetic view, a second sight of what is called the Improved Version of the scriptures, : quantum of fairness, the quantum of fidelity, the quantum of truth, I ay of error, I do not mean to include error in any of those terms,—as uantum of fidelity, fairness and truth, little need be said, after the works persons have appeared who have written upon the subject, particu- '. Magee's celebrated work upon the Atonement, which particularly s the assertion that it is based upon Archbishop Newcome's version of iptures, giving 18 or 20 instances in which that work is directly at : with his version; but Abraham Calovius, whose name I am ashamed I do not remember to have heard till I came to look into this matter, o wrote a great work called "Socinus Profligatus," appears to have ith the Socinians in this way, and therefore I must say, that this im- version has not the merit of novelty. It is at page 259 taken from s, and I suppose from his Socin s Profligatus, though he appears to en the author of a great many ot v s, the Socinian management elegantly described by Abraham Calo —"Dici non potest quam ne- su, quam profana impietate, qu horrendo sacrilegio versentur illi arum corruptores in sacris literis, ut suæ aut favere videantur aut on adversari sententiæ: modo enim scripta θεοπνευστα partim Novi, et imprimis Veteris Testamenti de sublimi auctoritatis divinæ fastigio nt, modo sententias et periodos quasdam scripturæ sacræ in dubium t, modo distinctiones parenthesit m et cola intervertunt, ac trajectionum ματι spiritus S. sensum invertunt, do per apostrophas, vel ex- ones mentem scripturæ corrump do per constructiones recens itas, modo per vocum significationes atas nullisque lexicographis , modo per αναλυειν violentam, modo per εξηγησιν prorsus insolentem, n et κατα διαμετρον oppositam et contrariam, sacras literas detorquent, a rotundis, supera inferis, cœlum terris miscent, horrendaque στρεβλοτητι sanctissima pervertunt, detestanda μεταμορφωσει transformant, quicquid apertum et clarum in sacris literis, id veluti sæpe rationis suæ obscu- a inventa."

Lords, that is not all the passage, but it is quite enough, without g your Lordships with more. If a man had endeavoured to describe e most rigid accuracy and truth the perversions, the wilful perversions inons of criticism, of all rules by which commentators have generally ided, one would not desire certainly a more illustrious instance than in blication to which reference has been made, and which was used on both ns in the court below as being that book, the distribution of which seems been one main and chief object of the British and Foreign Unitarian tion, to which your Lordships' attention has been called.

, my Lords, so much for Waterland; your Lordships have heard a al of Baxter. Now Baxter's works, as your Lordships know, are very us and extensive. I am not fortunate enough to possess them, and I ot consulted them in the originals, at least in every instance, not in ne or two instances; but there is a very useful book published by Mr. , which every one who desires to inform himself on this subject should ter of. It is called "An Historical Inquiry concerning the Principles ages of the English Presbyterians from the Restoration of Charles the to the death of Queen Anne." I am reading from the second edition, 3, printed by Ball, Paternoster Row, in the year 1836. Now, my the passage is from Baxter, as collected in that book, which I wish to nder your Lordships' attention. Your Lordships are aware that I am on that division of the argument which goes to show that persons of articular tenets were not considered Christians. Your Lordships know

from history, independently of the argument which you have heard, the great eminence that Baxter held among the Nonconformists of that day; he was their great leader, their great apostle, a man of acknowledged ability, learning and eminence, in all ways a man of whom I think it is Bishop Wilkins says, that it was sufficient for one age to have produced such a man as Baxter.

My Lords, at page 30, there is this extract from his work called "Cure of Church Divisions." Now I will not trouble your Lordships at any great length upon that, but at the beginning of the page it is thus; "As Christ is not divided, so his office for which he is called Christ is but one, which entirely is called the office of a Saviour, or Redeemer, or Mediator, which are all one: and the essential parts of it are, first his priestly; second, teaching and ruling offices or works."

Mr. ATTORNEY-GENERAL.—I can have no objection to your Lordships being referred to Wilson, with the understanding that the book is written *pendente lite*.

Lord LYNDHURST.—We can only refer to it for the purpose of referring again to Baxter.

Mr. KNIGHT BRUCE.—Wilson is our Blue book, only more fair.

Mr. ATTORNEY-GENERAL.—The Blue book we have laid before your Lordships contains extracts, only without comments; with that understanding, I have not the smallest objection that your Lordship should refer to it.

Lord LYNDHURST.—Mr. Knight Bruce cited one comment, did he not, from the Blue book?

Mr. ATTORNEY-GENERAL.—I believe that was a single exception. It is extract only, without a single observation being made.

Lord LYNDHURST.—Then we are to take Mr. Wilson's book as containing nothing but extracts from Baxter.

Mr. KNIGHT BRUCE.—Nothing more: I use it as a convenient mode of referring to Baxter.

Lord LYNDHURST.—You admit that the extracts are correct?

Mr. ATTORNEY-GENERAL.—I do not know my Lord; I dare say they are.

Lord LYNDHURST.—Otherwise you must go to Baxter.

Mr. KNIGHT BRUCE.—We can empty Red Cross Street Library into this House, but that is not very regular; but your Lordships will excuse the zeal of my estimable Client, who is not used to a Court of Justice. We have the book here if necessary, but this is a more convenient type. He says, "And consequently," after insisting further upon the point which I have mentioned, "it must needs be indeed *two churches* and not one; namely, *one church* of those who take Christ for their *teacher only*, and another of those that take him entirely as Christ. Seventhly, and by this rule, the Socinians and Mahometans who confess Christ to be a great teacher, but deny him to be the priest and sacrifice for sin, may be baptized and taken for Christians." This is the tolerant Baxter, this is the apostle of my learned friend, this is the supporter of Latitudinarianism!

Well, my Lords, it does not stop there: the citations go on to page 32, where they are from Baxter. In his "True and only Way of Concord," he says, "The Council of Nice truly decided all that had not true Christian baptism, consisting of all the true essentials, were to be re-baptized, and not others, whatever particular church they were of." If the person baptized profess to be baptized in general, but deny any essential in particular, it is not the true Christian baptism, but must be better done. When any came in so great error, as that the church scarce knew whether it was an essential part of faith and baptism that was denied, it made the controversy hard about their re-baptizing. Many thought that the Photinians and Arians, denying Christ's Godhead, as of the same substance with the Father, denied an essential article, and were to be re-baptized if they so entered at first. Our Soci-

s are much worse, that deny Christ's Godhead in a fuller sense. And doth he believe in Christ that believeth him not to be God, which is eminently essential to him? And to take into the church of Christ such ant the essentials, and Christ would not have received, is to corrupt his ch and bring in confusion, and such as will dishonour him, and will be hurtful in the church than they would be without; like rebels in a lom, or mutineers in an army, or enemies in a family, the nearer the e." And then, at page 33, Baxter says, "We [*nonconformists*] judge all present Infidels, *Sadducees and Socinians*, unfit [to receive the Lord's er], if not the Papists." My Lords, in the next page, page 34, Baxter e of his works speaks of a particular part, "Only of mere Nonconformists ich, and not men of other principles and parties that conform not, as , Turks, Socinians, Papists, Familists, Quakers, &c." Then he says, h accounts very much for a good deal of what your Lordships have heard t toleration, "There is one sort of men that have written many things lently for peace, even the Socinians, who, being heretics, have thereby much harm. Divers of them have laid down in general those rules and which might much have furthered the church's peace, if the same s had been written by men of name and reputation." "Many that are n to be Socinians have written much for peace; and Satan hath made advantage of it to bring all earnest motions for peace into suspicion; at a man can now scarce write for the retreat of Church warriors, and e quenching of our consuming flames, but he is presently suspected to ilty of some heresy, and to have specially need of charity or toleration lf; like the fox that, having lost his tail, would have all foxes' tails cut My Lords, in the second volume of Calamy's "Life and Times," in work there are several passages which may be usefully cited upon the al point, there are two particularly applicable to this. I should ap- your Lordships, if you should look into the work, of a circumstance of I dare say you do not require to be apprized, but the purport and tone, se who do not know the fact, of some of the notes, might create sur- : it is edited by a very learned person, John Towill Rutt, but he is a rian, and that accounts for the tone of some of the notes. Dr. Calamy as your Lordships know, a very eminent and strictly Trinitarian Non- rmist. The passages upon which I beg your Lordships' attention upon point are in pages 299 and 477 of the second volume: speaking of the of George the First into London, (your Lordships are aware at that time e laws with regard to Unitarians,) he says, "The king began his reign a noble declaration for liberty of conscience; and never could he be ed as acting inconsistently with it. At his first appearing in council, mber 22nd, he made a declaration, in which he expressed himself in the ving words: 'I take this occasion to express to you my firm purpose all that is in my power for the supporting and maintaining the Churches gland and Scotland as they are by law established, which I am of opi- may be effectually done without the least impairing the toleration allow- law to Protestant dissenters, so agreeable to Christian charity.' That is 1st of George the 1st. Now at page 477 of the same book, there is an nt of the law-suit respecting the legacy of £5000 left by Sir John Gayer oor ministers, not to such as were for domination or unnecessary se- ion, but such as were for the pious and charitable principles of the late end Mr. Richard Baxter;' this peculiar and fanciful sort of expression d a difficulty," and so on: and the question was, whether the legacy should the Church of England, where the executrix wished to give it, or whether gacy was to go to Dissenters; and, my Lords, in the result, the legacy iven to Dissenters, as being the persons who were intended by it. I now e passage merely for the sake of referring your Lordships to the expres- sed by the Testator at that time, who called the Reverend Mr. Richard r's principles "pious and charitable."

Lords, in the book to which I referred your Lordships just now, Mr.

Wilson's book, in the note at page 35, there is a reference to the work of Francis Cheynel who was a celebrated Presbyterian divine in the year 1650, and the title of that work is, "The divine Trinunity of the Father, Son, and Holy Spirit, or the blessed doctrine of the three co-essential subsistents in the eternal Godhead without any confusion or division of the distinct subsistences or multiplication of the most single and entire Godhead acknowledged, believed, adored by Christians, in opposition to Pagans, Jews, Mahometans, Blasphemers, and Anti-christian Heretics, who say they are Christians, but are not."

My Lords, at page 44 of the same book of Mr. Wilson's, there is another citation from Baxter, very much in the language of Howe; it is speaking of the creed commonly called the Athanasian creed: "I unfeignedly account the doctrine of the Trinity the very sum and kernel of the Christian religion (as expressed in our baptism), and Athanasius his creed the best explication of it that ever I read;" and Dr. Calamy adds, "our Fathers approved of the creed in general as heartily as their brethren, and esteemed it an excellent explication of the doctrine of the Trinity."

My Lords, in the following page reference is made to his opinion of the Assembly's Shorter Catechism, and then there is a citation from Baxter's True and Only Way of Concord, which is to this effect: he proposes that there shall be three several catalogues or laws drawn up, the first containing "the necessary parts of Christianity and Communion (the baptismal covenant, creed, Lord's prayer, and the essentials of ministry and communion,), which all tolerated ministers shall subscribe to or profess, having also testimonials of their competent abilities, piety and peaceableness." Then lower down, "a catalogue of doctrines of so great use as that none be suffered to preach or privately dispute against them. Those that break either of these laws, and subscribe not to the essentials first mentioned, to be judged intolerable (till reformed) in the ministry:" and he goes on, "the approved, tolerable and intolerable thus distinguished and thus used by the magistrate, will best answer the ends and interest of Christianity and the laws of Christ, and will do as much to preserve love, unity and peace, as is on earth to be expected, which all other contrary ways will unavoidably violate." Then, my Lords, at page 46, and the following pages, is given a draft of the form which Baxter suggested for such ministers as he suggested should be tolerated, and the second head of this, which is at page 46, is this: "I believe that God so loved the world that he gave his only Son to be their Saviour, who being God and one with the Father took our nature and became man, being conceived by the Holy Ghost," and so on. Now that is one of the articles of belief which Baxter held to be essential to toleration; those who refused or scrupled to subscribe that, were to be held intolerable, until reformed, and fit subjects for the prosecution of the civil magistrates.

My Lords, further on, at page 50, the work abounds with similar instances. In a note there is an extract from "Baxter's Church history of bishops and their councils:" speaking of the state of things in his own parish, Kidderminster, he says, "In my own charge (a great parish of many thousand souls), where I was above fourteen years, we had no one separate assembly, nor one sectary that I remember, save two or three apostate infidels"—then he says in a parenthesis "(or Socinians) and two or three Papists." I believe, my Lords, that is from his "True and Only Way of Concord," and not from his History of the Church, but the reference to the note will be——

Mr. ATTORNEY-GENERAL.—My learned friend will have no objection to my reading from the top of the same page respecting Arians? "I am against all sects and dividing parties; if the name of Christian be not enough, call me a Catholic Christian." He speaks in these terms of the dangerous heresy of Arius (that Christ was a super-angelical perfect spirit by which God made all the rest of the creatures,): "he that denieth the Deity of Christ denieth his essence, and he that denieth his essence denieth Christ and is no Christian." I merely read that to shew that he treats Arians in the same manner as Unitarians.

KNIGHT BRUCE.—I am much obliged to my learned friend the ey-General for reading it; I do not know the exact motive, nor is it al; I am very glad your Lordships have had the passage laid before

Lords, I have been reading from Baxter, I will now mention the opinions ews of Matthew Henry, a well-known person of eminence among the nformists, page 174 in Mr. Wilson's book. In the citation from Henry, re gives his definition of the true nature of schism, and calls it "an un- ible distance, division or alienation of affections among those who are Christians and agree in the fundamentals of religion, occasioned by their at apprehensions about little things."

same author, Henry, expresses himself thus, in a passage quoted at 16 of Mr. Wilson's book, in a sermon published in 1712 and 1713; he 'The three persons in the blessed Trinity gloriously concur, as in the cre- of man, so in the redeeming and governing of man, and particularly in g messengers to the children of men to bring them revelations of the will : ministers are ordained in the same name into which Christians are d, in the name of the Father, and of the Son and of the Holy Ghost, xviii. 19. Nor could they baptize in that name if they were not com- ned by the authority and devoted to the glory of that name." He then describe the Christian minister, and describes him as "an agent for e Father, Son and Holy Ghost, employed for God the Father to bring ls to him he has made, as their chief good and highest end; for God the bring the souls to him he has redeemed, as their prophet, priest and for God the Holy Ghost, to bring the souls he has the charge of under duct and his sanctifying power and influence." That is his definition of stian minister.

Lords, the opinion of Mr. Watson upon this subject, also an eminent among the Nonconformists, is at page 238 of this book; he was one ejected ministers, and the well-known work of his is recommended by tes, Dr. Williams, Mr. Howe, and twenty-three other London ministers. atson says, "Take away the distinction of the persons in the Trinity, u overthrow man's redemption." He speaks of the execrable opinion of inians, who deny the divinity of the Lord Jesus: "If to oppose Christ's rs be such a sin, what is it to oppose Christ himself? How sacrilegious Socinian, who would rob Christ of the best flower of his crown, his ad!" Speaking of the Arians, he says, "The denial by men who go for ans of this article of their creed, the Godhead of the Holy Spirit, is lent to renouncing their baptism;" and then he adds emphatically, "We no good Christians without the firm belief of the Trinity;" and after g expressions ascribed to some Quakers who denied the "person of " as an object of faith in order to salvation, asks, "How are they to be ed who go under the name of Christians, yet undervalue and renounce Christ! could the Devil himself speak worse blasphemy?" So much for atson.

, my Lords, for Dr. Williams, another very eminent member of that whose opinions are quoted in pages 214 and 215 of this book, where illiams proposes certain questions which might be safely proposed to all ates for Christian ordination, and he says, "Whatever variety or differ- ay be in smaller matters, in method, manner of thinking or speaking, it ar from breeding confusion, that it rather sets off that unity of faith and ny of sentiments which appear in all material points, and is an instance true freedom of thought, under the conduct of the scripture, which the ters stand up for as the privilege of every man;" and then as to the con- of faith which he proposes, there is this passage among others: "I y believe, though I cannot fathom, what the scripture has revealed con- g the Father, Son and Blessed Spirit, when it attributes equally to each n eternity and all other divine perfections and titles."

My Lords, Mr. James Owen was also a very eminent person among the Nonconformists, and his opinions are given in pp. 240 and 241 of Mr. Wilson's book, where he says, "I know not a more convincing instance of original corruption than to attempt an accommodation of the transcendent mysteries of Christianity to our shallow and depraved reasonings. Can any thing be more absurd than to measure an infinite being by such maxims and propositions as respect finite beings? this is to make a point run parallel with an infinite line, to contain the ocean in the hollow of an hand, and to measure the vast spaces of heaven with a span; yet this is the strength of the Socinian's reason; there can be no instance given, say they, of three persons in one nature among finite beings, therefore there can be no such thing in an infinite being,—as if an infinite being were to be measured by those that are finite. To reject the sacred Trinity, is to renounce our baptismal covenant, for we are baptized in the name of the Father, Son and Holy Ghost, and he that denieth the Son hath not the Father."

In the next page, 241, the same author goes on thus; speaking of the Arian heresy, he says, "This gangrene infected all the Eastern Churches and ruined the vitals of Christianity, provoked the Lord to remove their candlestick out of its place, as he had threatened, and to subject them to the Mahometan yoke, under which they groan to this day; and it is remarkable that the several streams of Arianism did at last disembogue themselves in the Dead Sea of Mahometanism. The Mahometans own Jesus Christ to be a great prophet but a mere man, and the Socinians make no more of him." And he concludes thus: "so that you may call Mahometanism the dregs of Arianism, and Socinianism the dregs of Mahometanism." So much for Mr. James Owen. My Lords, all these persons are persons of high name and first reputation and greatest learning, men of mark and note among the Nonconformists. Dr. Bates, a man perhaps better known than many I have mentioned,—among numerous other instances that occur of his opinions, there is one given in page 246 of Mr. Wilson's book. This is Dr. Bates: "Some truths are necessary, other profitable; some errors are directly opposite to the saving truths of the gospel, others by consequence undermine them: those who deny the Lord that bought them are guilty of damnable heresies, capital errors, not holding the head: Col. ii. 19. The doctrine of the Trinity is not a mere speculative truth, nor the denial of it speculative error. The Trinity is not only an object of faith but of worship. In baptism we are dedicated to the sacred Trinity, in the name of the Father, Son and Holy Ghost, which clearly proves they are of the same authority and power, and consequently of the same nature, for it is impossible to conceive of three infinite beings, for by necessity one would limit another. The apostle declares, 'without controversy great is the mystery of godliness: God was manifest in the flesh;'" and I call this particularly to your Lordships' attention, because it is the very verse from Timothy, with respect to the original Greek construction of which a controversy has arisen. Dr. Bates, whose views and opinions must be taken to conform with those of the Nonconformist Dissenters of that day, quotes it as it was in the received version of that day—"God was manifest in the flesh," &c.

Not to fatigue your Lordships, for I assure you, numerous as these references may appear, they are very restricted and narrow extracts from the materials we have, in the various sources of information which exist upon the subject,—I will only refer to Mr. Nathaniel Taylor, who was an eminent preacher at Salters' Hall, and who is mentioned in terms of great affection and respect by Calamy in his "Life and Times," particularly in the 1st volume, page 474. Some proofs of the opinions of Mr. Nathaniel Taylor upon this subject are given in pages 248, 249 and 252 of Mr. Wilson's book; he says at page 248, "the same accursed weed of Socinianism being transplanted into our English soil hath brought forth the same fruit. My main business is with the vindicator, (of Mr. Firmin's memory) whose design is to subvert the gospel of my blessed Lord and Saviour. Downright infidelity is the thing he drives at." He then

ision to explain the nature of faith in Christ, and he says of that "It
s a steadfast persuasion of his deity." He avoids the discussion of the
of the possibility of the salvation of the Heathen, but he says, "All
sert is, that it is impossible for any among us who live when and where
el is published, to be saved, if they do not believe in our Lord Jesus
" and speaking of "the heinous nature of unbelief," he says, "which
the greatest dishonor on God the Father, Son and Holy Ghost," and
ludes that part of his work thus: "now how can that man be saved
s and dies under the prevailing, reigning guilt of this sin, which does
inous a manner oppose the whole Trinity?"

ords, there are passages in page 249 to the same effect, and he says,
, it is a thousand pities that in England, a Goshen, a land of light,
he gospel sun hath shined in its meridian splendour, such black fogs
ise out of the bottomless pit as to darken our horizon. Trinitas, saith
veræ Theologiæ Fundamentum, quæ consequentes omnes fere doctrinas
imat. Whoso denies the Trinity denies his baptism, for we are bap-
, or into the name of Father, Son and Holy Ghost." And at page 252,
e; but I may first of all observe upon the expression in the text cited
r. Nathaniel Taylor, where, speaking of certain allegations against Trini-
he uses this expression, "having raked into the filthy dunghill of his
mies." In the note there is this, "the Heathenish Socinians that deny
ortality of the soul, (yea worse than Heathenish, for most Heathens do
n it,) must deny it to Christ himself as well as to his members. For if
sus, receive my spirit,' be words that prove not the surviving of the spirit
en, then 'Father, into thy hands I commend my spirit,' will not prove
iving of the spirit of Christ. And then what do these infidels make of
who also deny his deity?"

ords, this is the only other passage which I will bring under your at-
the same page, from the same writer: "Our modern infidels fight against
sed Saviour with his own sword, and turn the scriptures themselves,
manage them, into an engine to batter down the necessity of faith in him,
nly contend that mere morality or bare charity to the poor is sufficient
nan's salvation. Several texts they bring (and we know their father
ote scripture long before them,) to this purpose out of the Old Testa-
d several out of the New; and by that time the reader sees all their
ns, he will not think I have called them out of their name, when I term
fidels, though in the new style they affect to pass for Unitarians."

, my Lords, I do not say that these are my sentiments; it would be
pertinent in me to intrude them upon your Lordships as being or not
greeable with any opinions of my own, which are utterly immaterial to
ordships and every body but myself; my only business is with the
s of the leading and eminent persons who alone can remain upon record
ently, the class of persons to whom Lady Hewley, upon the confession
sides, unquestionably belonged.

in the selection that I have hitherto made of passages to be read to
ordships, I have not brought forward those passages which go merely to
e general belief and general sentiments of the Presbyterians and Dis-
generally as to the Trinity. That has not been my particular object,
e already stated to your Lordships: the selection I have made, and a
all selection it is, is only of those passages which shew that the writers
did not consider disbelievers of the Trinity to be Christians, and my
I believe I have proved that. My Lords, I have read not merely the
s of Noncomformist divines of the greatest eminence, but I have read
ion of the Church-of-England divines, the opinions of scientific theo-
writers, who perfectly understood what the state of the question was in
est ages, and who knew all that existed, capable of being referred to upon
ject, and their testimony is uniform, that in speaking of Christians and
n belief, those who believed that Christ was not God do not belong to
as of men and do not belong to that religion.

My Lords, in opposition to this, passage after passage have been cited to your Lordships, from writers belonging to a sect much oppressed, partly during their oppression and partly after they had begun to recover from their oppression, desiring toleration, praising toleration, expressing a dislike of creeds. That was their principle; they did not desire to be bound down by their signature to creeds and particular professions of faith in general, as thinking it inconsistent with Christian freedom, and thinking that it might be drawn into a precedent; because if the step were gained of requiring subscription to that which all believed, the next step might lead to requiring subscription to something that was doubted. But, my Lords, did any of those persons extend this toleration, this desire for open communion, to those whom they considered not Christians? No, every argument which is used, every passage that is read, proceeds upon the notion that all the persons involved in controversy believed in the fundamental doctrine of the Trinity. The notion of the disbeliever in the Trinity does not occur to them, *de quo agitur;* the question is not about such persons, any more than it is about Mahometans or Jews. *Agitur de Christianis*, and the dispute and controversy as to subscription or non-subscription, as to toleration or non-toleration, is a question which is within the body of Christianity, without which body all those authorities, one and all, from the beginning to the end, universally agree in this, that a denial of the Trinity is and stands excluded.

My Lords, that would be sufficient to dispose of the arguments that have been used on that subject, even without those other citations as to the meaning of the word Dissenter and Protestant, which I am able to bring under your Lordships' attention; but I may state to your Lordships in passing, that there were no more zealous supporters of the Trinity, more cordial believers in it, than those who opposed the subscription to a creed. That fact is notorious: but I may refer your Lordships particularly to what is said upon the subject in the second volume of Calamy's "Life and Times," pages 408, 409 and 410. My Lords, it relates to the heats which prevailed at Exeter with respect to the Antitrinitarian doctrine of Mr. Peirce, a gentleman who made a great noise in those days, and in a note there is this: "Great divisions among Dissenting teachers, one part being for imposing a test of their belief in the Trinity, the others declare it not necessary to profess their belief of the Trinity in any other words than are found in the New Testament, and that the framing and imposing of creeds was mere popery." Then, my Lords, it is stated, that some subscribed and some did not. "When the body met, one party was full of zeal for certain 'Advices,' in order to the preventing a breach at Exeter and other parts, about such matters as those that were now debated. The other party was as zealous to the full, for declaring their orthodoxy upon the doctrine of the Trinity, that so they might clear up their reputation, (which by the way no one had any reason to call in question,) and appear the fitter to give advice to others. Not being able to agree in this, they sadly squabbled; this was followed with many other differences." Then in the next page, "Warm complaints were made of the subscribing ministers as betraying their principles, and of those non-subscribing, as not sufficiently zealous for truth, and of particular persons among both as too free in their censures and invectives. Warm complaints were also made of the gentlemen concerned in the distribution of Lord Wharton's Charity to poor Dissenting Ministers; they were said to pursue the motion made in Parliament for a discriminating test. The flame flew from Exeter to London," and so on. Then he speaks of another meeting, and says, "It so fell out that when they met they could not agree whether they should first give their advice and then prove and clear their orthodoxy, or first manifest their orthodoxy and then give advice. Supposing a subscription requisite and proper, it was queried by some with warmth and earnestness, whether it was not sufficient to be made to the words and expressions of Scripture, or whether needful to be made to some human form. At last, they divided into subscribers and non-subscribers, and both sent 'Advices' to Exeter, though of a different nature. The letter sent to Exeter with the Advices" was so and so.

Then certain other facts are mentioned, and the editor gives in a note an extract from what the non-subscribers sent, those who had refused the subscription: "These non-subscribers say, 'We utterly disown the Arian doctrine and sincerely believe the doctrine of the Blessed Trinity and the proper Divinity of our Lord Jesus Christ.'" My Lords, it is plain, therefore, that the subscribers and the non-subscribers were equally sincere and equally serious in that which they considered to be essential to Christianity. Now, my Lords, I consider it proved, that by persons of all classes, at this period in particular, the person who disbelieved the Trinity was considered as not a Christian; that is, that Christianity was considered as including Trinitarianism (in what particular form or mode of expression beyond those words that belief was to be expressed in it, was not thought material to dispute or to inquire); the Godhead of our Saviour was considered essential by all.

Now, my Lords, that position renders it almost unnecessary to show that under the term "Dissenter," Unitarians were not included at this time. No one would think now for instance of calling a Mahometan a Dissenter; and of course they do not call a Jew or a Gentoo a Dissenter: they belong to a different religion, they are not persons who believe in a different modification from ours of our own religion; so your Lordships will find that those who are called Dissenters are treated by the writers and the public of that day to which we are applying our attention as Trinitarians.

My Lords, I have done with the word "Christian," at present; I now come to the word "Dissenter." The title of the Toleration Act would probably be alone sufficient for that purpose. It is known, and a Noble Lord now in the House, in his judgment below in one part of the Case, has particularly alluded to the historical fact, that the Toleration Act, followed as it was by the Blasphemy Act, which visited the deniers of the Trinity with such severe penalties, was considered a measure acceptable to the body of Dissenters throughout the kingdom, a great boon hailed by them with joy. They considered King William as their fast and firm friend, and their uneasiness and alarm were at their greatest height when the death of King William introduced Queen Anne to the throne. It is impossible to look, however slightly, into the history of this time without seeing the affection and confidence and gratitude with which they regarded King William, and the alarm which visited them when there was withdrawn from the crown by death that sovereign under whose reign toleration was refused to those who denied the Trinity, and under whose reign tremendous penalties against them by Acts of Parliament were passed, and which continued in force till the 53rd of George the Third.

My Lords, what is the title of the Toleration Act, which is now part of the law of the land, standing upon the Statute Book of the country? An Act for exempting His Majesty's Protestant subjects dissenting from the Church of England "from the penalties of a certain law." I shall refer to that title again when I come to show that the term Protestant does not apply to persons of Unitarian opinions, in the mode in which it is there used. If persons look to the title of that Act, and the persons excluded from toleration by it, can anybody doubt that the term "Protestant subjects dissenting from the Church of England" was held not to include persons denying the Trinity? It is not some of His Majesty's subjects, it is not a portion, but all the crown's Protestant subjects dissenting from the Church of England.

My Lords, the next minute (which is rather out of the order of time) which I have, is to be found in a passage from Mr. Burke's works, which as it is next in order in my notes, I may as well mention here. I use the second volume of a cheap collection in double pages, printed in 1837. It is a speech on the Bill for the relief of Protestant Dissenters. "The Honourable Gentleman insists much upon this circumstance of objection, namely, the division amongst the Dissenters. Why, Sir, the Dissenters, by the nature of the term, are open to have a division among themselves. They are Dissenters because they differ from the Church of England; not that they agree among themselves. They

are Presbyterians, they are Independents, some that do not agree to infant baptism, others that do not agree to the baptism of adults, or any baptism. All these are, however, tolerated under the Acts of King William and subsequent Acts, and their diversity of sentiments with one another did not and could not furnish an argument against their toleration, when their difference with ourselves furnished none."

Lord KENYON.—What is the date of that speech?

Mr. KNIGHT BRUCE.—1773. And, my Lords, if your Lordships will look at that celebrated case decided by Lord Mansfield, the Case of the City of London, which had reference to the same subject, which has been mentioned in the course of the argument, your Lordships will find that Lord Mansfield throughout uses the term Dissenter and speaks of all Dissenters generally, without exception, as tolerated and as entitled to the protection of the laws, and as having their religion and worship legalized at that time. Be it remembered that the Blasphemy Act and the exception in the Toleration Act were at that time in full force; he does not speak of any Dissenter excepted, nor was any Dissenter excepted. My Lords, there is also much upon the subject in Calamy.

Lord WYNFORD.—Where do you quote that speech of Lord Mansfield's from?

Mr. KNIGHT BRUCE.—I have not the book here, but we will find it for your Lordship. Now, my Lords, upon this particular point, as to the meaning of the word Dissenter as used at this period, I will refer your Lordships first of all to the first volume of Calamy's "Life and Times," which I have already referred to. I begin at page 371, where he says, "In 1696, the heats among the Dissenters continued. A new clamour against Mr. Williams was now studiously spread about. He was charged with denying that change of person between Christ and believers, that was necessary to the stating the doctrine of satisfaction against the Socinians." He states the Dissenters, as an entire body, having disputes among themselves, differing as to the mode of opposing the Socinians, but all opposed to them as a separate, distinct, and adverse body.

In the same volume, page 400, he is speaking of the event which, as your Lordships know, Swift has immortalized, when King William returned from abroad: "He passed through the City of London in great pomp. Sir Humphrey Edwin, Lord Mayor this year, carried the Sword before him (according to custom) in a gown of crimson velvet. This gentleman not only worshipped God publicly with the Dissenters, according to his usual custom, but carried the Regalia with him; which very much disgusted many of the Church of England. Tragical were the exclamations and complaints made upon this occasion. Among others, Dr. Nicholls tells the world that, to the great reproach of the Laws and of the City Magistracy, he carried the Sword with him to a nasty Conventicle that was kept in one of the City Halls:" these are the words of Dr. Nicholls, not of Dr. Calamy: "which horrid crime one of his own party defended by giving this arrogant reason for it, that by the Act of Parliament by which they have their liberty, their religion was as much established as ours. Many heartily wished that this action had been waived, as tending to enrage, yet were utterly to seek for the horridness of the crime. Nor could they discern the great arrogance of the plea, when the religion owned in Churches and Meetings, having the same object of worship, the same rule of faith and life, the same essential principles and the same end and aim, cannot differ in any capital matter. The allowance of the law is of necessity a sufficient establishment."

My Lords, with reference to the observation made by one of your Lordships, I see a reference in a note in the very page upon which I am now, on one occasion upon which Lord Mansfield spoke his opinion, and in this note in page 401, it is cited from the speech by Lord Mansfield to the Lords in the cause between the City of London and the Dissenters, on the nomination of the Sheriffs; it is also reported in the Court below, I think by Sir James Burrow. Lord Mansfield here states, "The Toleration Act renders that which

gal before, now legal. The Dissenters' way of worship is permitted
owed by this Act. It is not only exempted from punishment, but ren-
innocent and lawful. It is established." That is the particular passage
h I referred your Lordships just now, but there is more of it, both
was in the Court below, and in that speech in the House of Lords.
ords, at page 404 of the same volume, there is more upon the subject,
ne speaks of Mr. Firmin, a name which your Lordships have already
mentioned, a very good charitable man, but an Unitarian: "Mr. Tho-
min, so noted for his acts of charity, by which he did much good. But
feared by many that the opportunity this gave him of spreading the
n notions, of which he was a zealous admirer, at the same time, did so
urt, that it might be justly questioned which of the two was the greater."
, in page 460 of the same volume, he speaks of the Address of the Dis-
to Queen Anne, after the death of their great protector and friend,
William. He says, that "the high party soon grew triumphant, and
of nothing less than carrying all before them. The poor Dissenters,
lost their firm friend, were presently insulted, of which I have already
ome proof. They had but cloudy apprehensions, and yet bore several
s of rudeness with patience; and were not without hope of being be-
l by such as were in the true interest of their country, to which they
ays adhered. They made an Address to her Majesty, in a large body
p of the three denominations of Presbyterians, Independents and Anti-
ptists; and this being the first time of their joining together in an Ad-
Court, it was much taken notice of, and several were surprised and
nded their prudence."
ords, the next reference that I have upon this subject, is to pages 467
of the same volume, where Dr. Calamy speaks of an interview which
with Bishop Burnet, and he says, "I waited one morning on his Lord-
s received with great frankness, and spent some hours in free conver-
n his study. He was pleased to thank me for my Abridgment of Mr.
s Life, which he told me he had read with pleasure, and added, that as
t the case of the Dissenters in a better light than he had ever seen it
efore, so he thought it would be very unworthy of them for whose sake
aken so much pains, if they were not very grateful to me." Page 468
e same effect, and the only other references to this same work which
ow trouble your Lordships with, are in pages 473 and 474, which are
to the same effect; 473 begins thus: "We told his Lordship that the
nicating with the Church of England was no new practice among the
ers, nor of a late date:" then in 474: "the Dissenters in the city had
great loss in the sudden death of Mr. Nathaniel Taylor, of Salters'
he same gentleman whom I mentioned on a former occasion.
, my Lords, the second volume of Calamy's Life and Times abounds
ilar instances of the use of the term "Dissenter"; the pages that I have
are at pages 12 and 13, where the Dissenters are spoken of in the same
The Dissenting seminaries were not at this time more in number, nor
in more industry than formerly;" and in page 13: "Which is more, I
o be wondered at, and much more liable to objection, than the Dis-
willingness to have their youth trained up in useful learning." In
1 and 52, there are congratulatory addresses to the Crown after one
Duke of Marlborough's victories; one from the Dissenting Ministers of
ee Denominations in and about the cities of London and Westminster
sented to her Majesty, at Windsor, June 17, by Mr. Spademan, accom-
with twelve others; and at the foot of page 51, there is this passage:
gratefully acknowledge the share we have in the blessings of your Ma-
auspicious reign, which preserves to us both our civil and religious liber-
d take this occasion to renew to your Majesty the assurance of our
le fidelity, to which not only our interest and inclination but the sacred
gratitude and conscience oblige us; and we shall use our utmost en-

deavours in our several stations, to promote that union and moderation among your Protestant subjects, so often recommended by your Majesty, as highly necessary to the common safety."

My Lords, the same style of expression goes on at pages 317 and 318 of the same volume, an Address to George the First by a few Dissenting Ministers in the name of the whole Body of the Three Denominations. It thanks the Crown for protection and toleration, and states, "that the principles which oblige them to dissent from the opinions of the Church of England cannot be a reasonable provocation to any who have the least regard to the common rights of mankind, or the rules of the Christian religion. When there has been a design to introduce Popery and arbitrary power, the Protestant Dissenters have generally been first attacked; nor know we any other reason why we have now suffered the outrage of Papists, Nonjurors and other disaffected persons, but that they were sure we were a body of men fixed in our duty to your Majesty," and so on: then the answer of the King to that, is, "I am very much concerned at the unchristian and barbarous treatment which those of your persuasion have met with in several parts of my kingdom; and care shall be taken that a full compensation be made to them for their sufferings. I thank you for this dutiful and loyal address," and so on.

My Lords, the next page I have marked for this purpose is page 402, where he says, "The state of the Case was this: There were some Members of the Commons who had deserted the worshipping assemblies of the Dissenters, which they formerly frequented," and so on. "These persons seemed inclined now, as the Repealing Act went forward, to oppose the very first thing attempted in their favour, in a parliamentary way, after the accession of King George. Or, if they did not make a downright opposition, they at least bespattered, and by a side wind blasted them, and endeavoured to clog the Bill depending, by moving for the adding to it a sort of test, in relation to the doctrine of the Holy Trinity, as to which the body of the Dissenters were (unkindly and without any just ground) represented as wavering and unsettled."

My Lords, the only other references that upon this point I have, are from pages 477 and 479, which I before referred your Lordships to, with relation to Sir John Gayer's Legacy, where, speaking of the decree which Sir Joseph Jekyl gave against the Church of England, upon the right to the benefit of the Legacy, he says, "After a long hearing, the Master of the Rolls, Sir Joseph Jekyl, in a very handsome manner, gave a Decree in favour of the Dissenters, for which, as it became us, we were very thankful, though he therein did us but justice." Now, my Lords, so much for the quotations from Calamy.

Upon the same point, I would refer your Lordships to a book which I have not, Molyneux's Letter to Locke, in which he speaks of the prosecution in Dublin of Mr. Toland, for his book in favour of Unitarianism. The prosecution is there spoken of by Molyneux very remarkably, as a prosecution instigated by *the Dissenters*, not by one body of Dissenters against another, but a prosecution at the instance of the Dissenters.

Lord Bolingbroke, in his Letter on Parties, also uses the same expression: he says, "The laws that prevented Dissenters from worshipping God according to their conscience, are no longer a terror to them,"—a most remarkable expression, considering the existence, at the period when Lord Bolingbroke wrote, of the severe laws that then existed against Unitarianism.

My Lords, there exists also in Lord Somers's Tracts, a petition presented by Dr. Bates, the gentleman to whose works some reference has also been made, to Charles II., couched in terms of very strong loyalty, to use the coldest expression, upon the subject, and praying him to refuse toleration to those who denied the Trinity.

My Lords, there are certain opinions upon this subject also to be found cited in Mr. Wilson's book, to which upon this point I will refer your Lordships to pages 214, 215 and 237. My Lords, I find that I have already

ed to page 214, for the purpose of my observations upon the use of the "Christian," but it also applies to the use of the word "Dissenter." e custom among the Dissenters of delivering a Confession of their faith eir Ordination, though not generally used by other Churches, is very r," and so on. The same expression is to be found in those two pages h I have mentioned, and in page 237 there is the opinion of Lobb, who as your Lordships know, a very eminent person among them. At page after speaking of the doctrine of the Trinity, he exclaims, "How bar- is and horrid is it to traduce and represent our academies as seminaries e Atheism, Deism, Tritheism, Socinianism, &c. are openly professed and it! We challenge the whole world to prove the least tittle of this black e against us. What evidence of orthodoxy have or can any give, which Dissenters have not given?" Now, my Lords, there are many more in- es with which I will not fatigue your Lordships, but I think I have done gh for the purpose of showing that the term "Dissenter," as used before, it, and after the time in question, by persons of all classes, casts and de- tions, did not include, nor was ever thought capable of including, per- who denied the doctrine of the Trinity, any more than it would include eminent person to whom was presented an address, which my learned l Mr. Kindersley, in his reading, met with, and read to the Court below. a document of which certainly I was ignorant of the existence, until my ed friend Mr. Kindersley produced it in the Court below. My Lords, were not Dissenters for the same reason, as I have said, that this person not a Dissenter. I am reading from the first volume of the Theological ts of the Rev. Charles Leslie, London 1721, page 205, upon the Socinian roversy. He begins, "The importance of the Socinian Controversy s itself, and needs no words to enforce it;" and he speaks of Mr. Firmin, y amiable person, though entertaining Socinian sentiments, and he says, tead of enlarging in a preface I will here present the reader with a rarity, h I take to be so because of the difficulty I had to obtain it; it is the ving Address or Epistle of our Unitarians to the Morocco Ambassador. the Latin Treatise mentioned in it (of which likewise I have a copy) I seen in print here in London, to show the diligence of the party." With- roubling your Lordships any more, I will proceed to read the Address the Unitarians to the Morocco Ambassador, from those who would now e to be called Dissenters: "An Epistle dedicatory to his Illustrious Ex- cy, Ameth Ben Ameth, Embassador of the mighty Empire of Fez and cco to Charles II., King of Great Britain. Amongst the many splendid tainments and receptions, amidst the several congratulatory encomiums presents that were offered unto your Excellency, as public testimonies of steem and admiration the inhabitants of this western empire do justly ive of the mighty and glorious Emperor of Morocco, your master, and of own peculiar virtues; there hath been no such address or present made your Excellency, none, as we presume, that was of a weightier import- (though slenderer appearance), than this which we now submit to your and acceptance at your departure. For the contents thereof being the mysteries of that all-sufficient and invisible one Deity, its own in- c value needs no words, nor the usual adornments that might be expected us, to set it out with an awkward splendour, to so discerning a person iritual and sublime matters as your Excellency is known to be, even in dgment of learned universities. Besides truth in these countries is fain sometimes like princes, in a disguise; who being out of their own king- are driven to put by their royal habiliments, for to converse with more and freedom with a few wise and faithful worthies they can best trust. ion then, excellent Sir, the religion of an one only God-head (as also of other great verities, wherein ye agree with our sect and disagree from Christians) is the vailed princess, whereof we are now become the ven- ome ushers into your Excellency's presence. I said venturesome, not

by reason of any affront we need fear at your hands, but rather from the rash severity of some of our own fellow Christians here, for venting those verities, we shall declare to hold in common with you, (which are contrary to them,) yet Christ's and our spirit is otherwise, to essay by gentle persuasions and union with all mankind, as far as may be.

"Know, therefore, noble Sir, that we are of that sect of Christians that are called Unitarians; who, first of all, do both in our own names, and in that of a multitude of our persuasion, (a wise and religious sort of people,) heartily salute and congratulate your Excellency, and all that are with you, as votaries and fellow worshippers of that sole Supreme Deity of the Almighty Father and Creator. And we greatly rejoice and thank his divine bounty that hath preserved your Emperor and his people in the excellent knowledge of that truth, touching the belief of an only sovereign God (who hath no distinction or plurality of persons), and in many other wholesome doctrines wherein ye persevere"—(what these doctrines are it does not appear)—"about which this our Western part of the world are declined into several errors from the integrity of their predecessors."

Well, then, my Lords, without troubling your Lordships with the whole of that letter, they speak clearly of the points of agreement between Mahometans and Unitarians, and they say, "In this our second and third treatise the objects are first to set forth briefly and distinctly in what points all Christians do generally agree with Mahometans in matters of religion. Secondly, in what things Christians universally disagree from you, with the reasons for the same. Thirdly, in what cases you do justly dissent from the Roman Catholics. Fourthly, that Protestant Christians do join with you in your condemning of those Romish errors, and theirs and our reasons for the same. Fifthly, we intend there to lay down in what articles we the Unitarian Christians (of all others) do solely concur with you Mahometans (to which we draw nigher in those important points than all other Protestants or Papal Christians,) with our additional arguments to yours, to prove, that both we and you have unavoidable grounds from Scripture and Reason, to dissent from other Christians in such verities, though we do count them otherwise than as our brethren in the Lord Jesus Christ. Therefore, in the sixth place, we, as your nearest fellow-champions for those truths, we, who with our Unitarian brethren were in all ages exercised to defend with our pens the faith of one Supreme God (without personalities or pluralities), as he hath raised your Mahomet to do the same with the sword, as a scourge on those idolizing Christians; we, I say, in this our peculiar lot in religious controversies, shall in our duty of love undertake to discover unto you, in these our books, those weak places that are found in the platform of your religion, and shall herein (with your favour,) offer to your consideration some materials to repair them. For we do (for the vindication of your law-maker's glory) strive to prove that such faults and irregularities, not cohering with the fashion of the rest of the Alcoran building, nor with the undoubted sayings of your Prophet, nor with the Gospel of Christ, whereof Mahomet would have himself to be but a preacher, that therefore, I say, those contradictions were foisted into the scattered papers found after Mahomet's death, of which in truth the Alcoran was made up, it being otherwise impossible that a man of that judgement, that hath proved itself in other things so conspicuously, should be guilty of so many and frequent repugnancies, as are to be seen in those writings and laws that are now-a-days given out under his name. We do, then, in these our papers endeavour to clear by whom and in what time such alterations were made in the first setting out of the Alcoran," and so on: "therefore are we called Unitarians, or worshippers of that one only Godhead in essence and person, that we may be distinguished from those backsliding Christians named Trinitarians, who own three co-equal and self-subsisting persons, whereof every one is an absolute and infinite God." They go on to mention authorities upon the subject; they speak of the Trinitarian schism, and con-

this way: "all those together, which far exceed the Trinity-asserting
ns, do maintain with us that faith of one Sovereign God, one only in
ind essence. And why should I forget to add you Mahometans, who
sent with us in the belief and worship of an one only Supreme Deity,
n be glory for ever, amen?" And then it goes on to compliment the
ador, saying, "Be pleased, Noble Sir, to communicate the import of these
ipts to the consideration of the fittest persons of your countrymen,
a scantling of what the more learned of our Unitarian brethren could
beyond anything that 's here on these subjects of our differences. And
might think it too mean an office to be instrumental in spreading any
ine verity, consider if it be so great a matter to perform the part of an
ador among earthly princes (which your Excellency hath so laudably
late), how far more glorious is it to undertake the least embassy in
e and religion of the Supreme Monarch of the world."

my Lords, I think it cannot be much wondered at, that a class of
who would address a Turk and Mahomedan in this manner, were not
ourably received by Christians, or classed under the term Dissenters.
ords, before I apply myself to the use of the term Protestant, I would
ur Lordships to the expression of Dr. Priestley's, which I find quoted
ame volume of Robert Hall's works, which I mentioned just now, page
re the author says, "Though Unitarians repel with sufficient indigna-
charge of symbolizing with Deists when advanced by the Orthodox,
so conscious of its truth that they sometimes acknowledge it them-
In a letter to Mr. Lindsey, Dr. Priestley, speaking of the celebrated
n, President of the United States, when he arrived at America, says,
enerally reported to be an unbeliever;' he adds, 'but if so, you know,
not be far from us.'" My Lords, an instance has occurred very re-
which is perfectly well known, with reference to an eminent divine on
part, and a well-known Unitarian minister on the other, with respect
British and Foreign schools, in a very large and important town in the
n part of this kingdom. In one of those schools, called the British
eign Schools, the Apostolical Creed had been for some time in use for
g the children; the clergyman of the district was visiting the school
me afterwards, and he found that the Apostolical Creed had been dis-
; he asked a very respectable Unitarian gentleman of the place the
and he said, "To tell you the truth, the Jews do not like it, neither
" accordingly, the Creed was sent out of the school and did not make
arance again.

r come to the few authorities with which I shall trouble you, to show
term Protestant, as used generally at this period of time, was never
include any disbeliever in the Trinity, or any person who did not
o that which was a vital part of Christianity; a Protestant being a be-
the Christian religion.

e already referred your Lordships to the title of the Toleration Act;
An Act to relieve His Majesty's Protestant Subjects dissenting from the
of England, from certain penalties." My Lords, Chillingworth has
ferred to more than once in the course of these discussions upon the
notion of toleration. I am reading from the first volume of the edition
ingworth's works, printed in 1820, where at page 35, in a controversial
with a Roman Catholic, he says, "Your calumnies against Protestants
are set down in these words. The very doctrine of Protestants, if it
wed closely, and with coherence to itself, must of necessity induce
nism. This I say confidently, and evidently prove, by instancing in
or, which may well be termed the capital and mother heresy, from
ll others must follow at ease:" he then goes on, "and talk not here of
cripture, for if the true Church may err, in defining what Scriptures
nical, or in delivering the sense and meaning thereof, we are still de-
either upon the private spirit (a foolery now exploded out of England,

which finally leaving every man to his own conceit, ends in Socinianism,) or else upon natural wit and judgment for examining and determining what Scriptures contain true or false doctrine, and in that respect ought to be received or rejected. And indeed take away the authority of God's Church, no man can be assured that any one book or parcel of Scripture was written by Divine Inspiration, or that all the contents are infallibly true; which are the direct errors of Socinians. If it were but for this reason alone, no man who regards the eternal salvation of his soul, would live or die in Protestancy, from which so vast absurdities as these of the Socinians must inevitably follow." And at page 46, he says, quoting from the author with whom the controversy is in hand, "If men follow their reason and discourse, they will (if they understand themselves) be led to Socinianism, and thus you see with what probable matter I might furnish out and justify my accusation, if I should charge you with leading men to Socinianism. Yet do I not conceive that I have ground enough for this odious imputation, and much less should you have charged Protestants with it, whom you confess to abhor and detest it, and who fight against it, not with the broken reeds and out of the paper fortresses of an imaginary infallibility which were only to make sport for their adversaries, but with the sword of the spirit, the word of God. Thus Protestants in general, I hope, are sufficiently vindicated from your calumny. I proceed now to do the same service for the divines of England, whom you question, first in point of learning and sufficiency, and then in point of conscience and honesty." My Lords, in Leibnitz's Theological Works, I am reading from Duten's Geneva edition, 1768, first volume, page 77, one of his Theological works, I think it is upon the Reasonableness of Faith, De Conformitate Fidei cum Ratione, page 77, he speaks of Calovius, an extract from whose work I read from Waterland a short time ago; he says, "Partis utriusque Protestantes, ubi Socinianos debellare mens est, satis inter se conveniunt, et quoniam philosophia cum se Sectariorum non est adcuratissima, eos sæpe feliciter profligarunt," and so on. He then uses the term Protestant in a sense directly opposed to and exclusive of Socinians.

My Lords, I would now refer your Lordships, upon the same point, to certain passages of the second volume of Calamy, to some of which I have referred your Lordships before, pages 317 and 318, which relate to the use of the term "Protestant," as well as the use of the term "Dissenter," to which I have referred, pages 387 and 388, to the same effect, wherein the speech of the King, on meeting Parliament and the addresses from both Houses are mentioned. In his speech the King thus expresses himself: "I could heartily wish, that when the common enemies of our religion are, by all manner of artifices, endeavouring to undermine and weaken it at home and abroad, all friends to our present happy establishment might unanimously concur in some proper method for the greater strengthening the Protestant interest, of which, as the Church of England is unquestionably the main support and bulwark, so will she reap the powerful benefit of every advantage accruing by the union and mutual charity of all Protestants." The Lords in their address expressed themselves in this manner: "We have a grateful sense of your Majesty's concern for the Protestant religion, and the Church of England, as by law established, which, as it has always been the chief of the Protestant Churches, so can never be so well supported as by strengthening and uniting (as far as may be) the Protestant interest;" and the Commons addressed his Majesty to the same effect.

Lord WYNFORD.—What is the date of it?

Mr. KNIGHT BRUCE.—I think it was the first Parliament of George the First; I rather think so; I am not sure; it is the occasion upon which Mr. Shippen was sent to the Tower for that violent observation he made upon the King's speech. I have not the year immediately before me. The other pages to which I have referred upon this point are 299 and 300, which I think I have mentioned before for another purpose.

There is one passage, and one only, in Wilson's book besides the one I have

which I would mention to show the opinions of Mr. Shower upon this
page 169. Mr. Shower, who was an eminent Nonconformist, thus
d himself: "How needful is it that we do our utmost to unite against
mon enemy of our Christian faith, and encourage and strengthen one
in our endeavours for the common interest of real Christianity! Do
all 'hold the head,' and shall we not own and love one another,
in so many more and greater things than they are about which we
Do we not all of us profess to dissent in some things from those of
ional Establishment upon the like principles of conscience, and yet to
I honour them as Protestants and brethren? Let us always distinguish
those things about which good and wise men may differ, and yet be
n, who love God and love one another, and those things that are essen-
Christianity. Have not all English Protestants common enemies that
e glad to involve us in a general ruin, and shall we contribute to it by
among ourselves for want of a spirit of charity, unity and usual for-
s? Common enemies, I say, not the Romanists only, but such as
all revealed religion, overthrow the authority of the Holy Scriptures
y the Divinity of our blessed Lord, who would run down and ridicule
ed ministry and all the positive institutions of the Christian religion."
my Lords, these are only a few of the various references that might
e to the writings of that period, with reference to the meaning in
hose terms were held, and I believe the more thoroughly the matter
igated, the more clearly it will appear that not merely the correct sci-
lefinition of the term Christianity, not only the mode in which it was
ood both in the earlier and later ages of Christianity, but that the
which the term was used and accepted amongst persons of all classes
ominations, was one which excluded the notion of a disbelief in the
I believe that the extracts and proofs I have read to your Lordships
cient to show, that even the term "Dissenter" was not held to include
at even the term "Protestant" did not do so, and that the term
iever" was one which a great writer among them considered appro-
o himself; and, my Lords, is it a case where the evidence stands,
I have brought under your Lordships' attention, that mere general
f a tolerant spirit, or a desire to enter into communion with those who
differ as to fundamentals, is proof of a spirit of that description to be
consistent with those denunciations, whether right or wrong, which
iversally felt and declared with regard to persons of that description?
ords, in my desire to shorten this matter, I have omitted one passage
I really think I ought to read, particularly as it is not a very common
in the Epistle Dedicatory to the Embassador of the Emperor of Mo-
and it shall be but one passage in addition to what I have read: "We,
nearest fellow champions of those truths; we, who with your Uni-
rethren, were in all ages exercised to defend with our pens the faith
Supreme God, (without personalities or pluralities,) as he hath raised
ahomet to do the same with the sword, as a scourge on those idolizing
ns; we, I say, in this our peculiar lot in religious controversies, shall
luty of love undertake to discover unto you, in these our books, those
aces that are found in the platform of your religion," and so on.
my Lords, I have already taken the liberty of calling your Lordships'
n to the true and accurate mode of accounting for all the passages
ve been brought under your Lordships' attention from the various
who have been cited upon the subject of toleration, communion,
n forbearance and possible or probable communion: I have shown
ordships, that all, or nearly all, of the variety of writers from whom
ssages have been quoted, have agreed that there are some fundamental
pon which toleration is irreconcilable with the duties that Christians
their religion. Baxter in so many words divides heresies and differ-
f opinion into tolerable and intolerable, and in so many words ranks

the denial of the Trinity among them which are intolerable. So with regard to various other writers who have been mentioned; they were desirous to sink minor differences, they were desirous that all disputes among themselves, as to matters of Church discipline, matters of interpretation of particular phrases, which were consistent with a belief in Christianity as understood by them; they were desirous that such matters should not lead to disunion to a greater extent than that disunion had already existed. But not one phrase will be found in any one of the writings that have been brought under your Lordships' attention extending that toleration to the denial of the Trinity. There has been passage after passage quoted by my learned friends who successively addressed your Lordships, and a great deal of general declaration of Christian charity, the necessity of forbearance, the desire for mutual communion, and so on, but not in one passage is there a phrase or an expression which can be tortured, when properly considered, into an approval or toleration of what is called Unitarianism. I cannot but complain of passages having been read by those who perfectly know what a different result and conclusion they were designed to encourage or promote. Passages I have read from the same authors to a great extent, and others, who clearly show this opinion upon the point at issue, and the intolerable nature in their estimate of the doctrines of Unitarianism; which shows that their discussions have proceeded on this common basis, that they were all considered and believed to be Christians, but upon points upon which a man could not think in a particular manner without ceasing to be a Christian, they were considered entirely out of the question, and as belonging to those who were common enemies.

My Lords, something has been said in the argument of the necessity, or sufficiency I should rather say, (according to what is contended to be supposable to be Lady Hewley's opinions,) of belief in the Scriptures generally, stating the Scripture was believed to be true, was the ground of doctrine, and was the rule of life, and that that was all that Lady Hewley desired of those whose ministry she designed to encourage.

My Lords, whatever we may think of the alleged mode of instructing youth in religious principles of which Mr. Wellbeloved speaks in his answers, and which I have brought under your Lordships' attention, yet such a mode of inculcating religion is obviously inconsistent with the notion of preaching. Did it ever occur to the mind of any man that preaching the Gospel was merely reading the words of the sacred text and advising them to be followed? We can understand, that upon points of morals, upon which there is a great difference of opinion as to the extent to which sermons should be treatises on morals, worthy and excellent people differ upon that point,—some people thinking that the chief office of a sermon is matter of doctrine and faith, others thinking differently,—but no doubt can exist that among the Nonconformists in general, and among those who approach nearest to their opinions upon such subjects, the nature and office of preaching is the expounding of the Gospel and setting forth its doctrines and principles as they bear upon faith; a notion which is utterly inconsistent with the mere reading of the Gospel or desiring it or inculcating it as to be believed, without stating in what manner or in what sense it is to be believed. It involves a palpable absurdity. Lady Hewley did not mean the reading of the Scriptures; she has used the term "preaching the Gospel" according to the universal acceptation, as preaching the doctrines of the Gospel upon faith and also otherwise, but assuredly upon faith, and stating how that Gospel is to be received and to be believed. A common expression, particularly among persons belonging to that class and division of the Christian religion of which we are now discoursing, is that of preaching or not preaching the Gospel: and the common sense in which that term is used imports approbation or disapprobation of the particular mode of receiving those tenets and doctrines upon points of faith which the particular preacher does or does not recommend or prescribe. It is a necessity which is involved in the very expression, nor is it possible to conceive, as it seems to me, a greater

absurdity than they would involve themselves in, who say that this person preaches the Gospel according to Lady Hewley's meaning, who tells his congregation that they are to believe the Gospel, but interprets it in any way that suits his own fancy.

My Lords, that subject is well discussed in Waterland, the volume to which I have before referred your Lordships, at pages 150, 151 and 152, where he cites the Case of the Abbot of St. Clare, who being a very ingenious person, whether a Jesuit or not I do not know, wrote a commentary expounding the Thirty-nine Articles of the Church of England as being Articles exactly conformable to the doctrines of the Roman Church upon points of faith; a most ingenious work; Waterland suggests whether that could be taken as proof that St. Clare was a believer in the Thirty-nine Articles and was a Protestant because he had written such a treatise: "But if the meaning of the plea be this; that though a man teaches any wild doctrines whatever, yet if he does but father those doctrines upon Sacred Writ by any begged or forced construction, (acknowledging scripture all the while as his rule of faith,) he ought to be received as a fellow-Christian; I say, if this be the plea, it is so manifestly absurd and ridiculous at the first hearing that it can scarce deserve a serious answer. For does the faith of Christ lie in words only or in things? Or is the repeating the bare letter of Scripture after a man has spirited away the sense, delivering the divine truths, or contradicting or defeating them? To make the case plainer, I shall illustrate it by a resembling instance. Franciscus a Sanda Clara, a known Papist, who published his book in 1634, contrived to make our Thirty-nine Articles speak his own sentiments, reconciling them with great dexterity and most amazing subtilty to the Council of Trent. Now, put the question, whether, upon his thus professing his faith in Protestant forms Popishly interpreted, he could justly claim every privilege of a Church-of-England-man, and whether we were bound to receive him as a fellow-Protestant? A very little share of common sense, I presume, will be sufficient to determine the question in the negative. The like I say of any person who interprets our Christian charter to an anti-christian sense; he has no more right to be admitted as a fellow-Christian than the other had to be received as a fellow-Protestant; for though both admit the same words or forms which we do, yet so long as they teach things directly contrary to those very words or forms, rightly understood, they are chargeable with false doctrine in our account; and thus teaching such doctrines in a manner so insidious and fraudulent is so far from alleviating their guilt, that it greatly enhances it. It may be said, perhaps, in the way of reply, that the famous Abbot of St. Clare knew that he perverted the true meaning and intent of our Articles, while those that pervert the sense of Scripture may believe that they justly interpret it. If that be the case, it is true that it will make a difference; but I have no occasion to consider that difference here, it being foreign to the present point; for supposing the perverters of Scripture to do it ever so wickedly and fraudulently, yet I may make use of the same plea, that they were ready to profess their faith in Scripture words, and therefore ought not to be excluded from Christian communion."

My Lords, Chillingworth also has a remarkable expression upon this kind of consideration, page 38 of the volume I before referred your Lordships to: "As if I should pretend that I should submit to the laws of the king of England, but should indeed resolve to obey him in that sense which the king of France should put upon them, whatsoever it were. I presume every understanding man would say that I did indeed obey the king of France, and not the king of England. If I should pretend to believe the Bible, but that I would understand it according to the sense which the chief Mufti should put upon it, who would not say that I were a Christian in pretence only, but indeed a Mahometan?" Such an argument, of course, does not deserve to be seriously coped with. It is plain by the preaching the Gospel and providing for the Ministers, the Foundress of the Charity believed that it meant

the inculcators of particular doctrines, and meant not simply reading the words, not merely desiring them to be believed, but their exposition in a particular way. Mr. Wellbeloved says, in his answer, that his mode of teaching divinity is to lay before his pupils the different interpretations that the text has received, and the different readings of manuscripts, and so on, and then to leave every person to form his own judgment. Is that the mode of treating a congregation, especially a congregation of lower and more ordinary persons? The duty of a Minister is to give a particular sense and interpretation to particular parts of Scripture, and tell his congregation how they are to be believed; and that man does or does not preach the Gospel, accordingly, as he gives a sound interpretation or not. He preaches or does not preach the Gospel, according to the views of those who hear him; he gives or does not give a sound interpretation to the Gospel. That was the duty of a preacher of the Gospel, and was so particularly among the Nonconformists. To what strange consequences would the argument on the other side of the Bar lead! It would lead to this, that if the body of Trustees had happened to be Roman Catholics, as they are now Unitarians, that the whole produce of the Charity might be applied to Roman Catholic purposes. The Roman Catholics believe the Scriptures as we do, and they believe the same Scriptures as we do, not the Scriptures of the Unitarians. The opinions and belief of the Roman Catholic Church and our own with respect to the canonical books are precisely the same; where there is a difference, the difference is in the mode of interpreting particular passages of Scripture, and the reception or non-reception of tradition as of equal force with Scripture. To say that a man who does not believe the Scriptures but preaches the Gospel would be a preacher according to Lady Hewley's views, is too absurd to deserve notice. But how does that differ from the argument on the other side? She was a Nonconformist, a great favourer of the ejected ministers; she would have shrunk with horror from preaching Popery, and would she have less shrunk with horror from hearing a denial of the Divinity of the Lord and Saviour from the pulpit? It is quite plain it would have been in her ears not only a grievous offence, but a grievous crime, to which she could not have listened without involving herself in the charge of blasphemy, according to the views of all those in whose opinions she agreed, and upon which both sides agree she believed. To say, as it has been argued, that the mere reception of the Scriptures, without attention to the sense of the Scriptures, is sufficient, involves a clear absurdity. You must consider the preaching of the Gospel and receiving the Scriptures in one sense, and it is agreed that that must be the Protestant sense. What ground is there for the reception of it in a Protestant sense, which does not go the length of saying it must be the reception of the Scriptures in the Trinitarian, that is, the Christian sense?

My Lords, I will not fatigue your Lordships with repeating what I have said, and what has been much better said in some of the authors from which I have quoted passages to your Lordships with reference to the points upon which men might safely differ, and points upon which they could not safely differ,—points upon which there might be communion, points which would exclude from communion,—points that might be tolerated, and points that might not be tolerated. What is toleration in the largest sense? It is brotherly love and friendship, with whom? With brother Christians. I have shown, and clearly shown, that those individuals, from the sense in which they use those phrases, were clearly speaking of men, between whom and themselves certain points of agreement existed upon the essential ingredients of Christianity; and one without which Christianity could not be, was this, that the Godhead of our Saviour was to be believed. Those who did not believe the Godhead of our Saviour were not treated so, were not denominated Protestants; they were not denominated Dissenters, they were not denominated Christians; they were treated as, and called, infidels and blas-

ers, placed upon a level with Jews and Mahometans, excluded from the ian community, and with whom communion could not be held without and sin.

Lords, I am not justifying those opinions, I am not saying whether they ght or wrong; it is no part of my function to do so; but it is clear that vere the opinions of those with whom Lady Hewley's belief was asso-, and among whom her life was passed, and for the benefit of whom it n she intended this magnificent institution.

w, in what position is it, if I am right in even a small portion of the vations I have addressed to your Lordships, that this establishment has placed? Your Lordships are aware that Socinianism has been growing d increasing of late years. It has gradually withdrawn itself from the alment and obscurity in which it originally involved itself. Changes of and manners, and of opinions, and greater laxity as well as greater tion, which had spread themselves over the world, induced much less ion to religious differences; but I am sorry to say, also, much less ion to religion in general. It was in such an altered and altering state ling that Socinianism reared its head; the public became gradually tomed to contemplate men who held these doctrines without abhorrence ithout aversion. Do I blame that? God forbid I should do so. In-ally, I think it a highly improved state of feeling, so far at least; but d all question it was a changed state of public feeling. My Lords, these nes gradually gaining head, according to the well-known lines,

> "But grown familiar with her face,
> We first endure, then pity, then embrace."

of worship for professors of these doctrines gradually grew up in the ry. In time, the doctrines spread among the trustees and frequenters esbyterian establishments and Presbyterian meeting-houses, those per-either having changed their original opinions, or being introduced under guise of their opinions gradually throughout the country, created an sive perversion of charities of this description; that appears distinctly the testimony of the witnesses who have been examined, and it is indeed tter of public notoriety, and it is perfectly well known throughout the ry from north to south, that Presbyterian places of worship and Presby-charities are now to a very great extent in the hands of the professors se doctrines, which would have been and were held, justly or unjustly, sorrence and detestation by those who founded those establishments and led those charities; and it is to be accounted for in the manner I have ly mentioned to your Lordships. Some instances, and only some, have red in which it has been litigated; this at present is one of those. The of the present perversion appears to have been, that a gentleman of the of Cappe—Newcome Cappe, I believe, was his name—was introduced years ago as the preacher at St. Saviour-Gate Chapel. He appears ally to have introduced Unitarian notions in the congregation. Knowing inions, others began to frequent the chapel, and from time to time other ns were appointed Trustees of the Charity, until at last they got it ly in their own hands, and have had it entirely in their own hands for time substantially. One or two Church-of-England-men, or men not d to be Unitarians, are among them, but the great bulk were of the ons I have stated, and the result was the application of the funds for in the manner pointed out. We have only laid before your Lordships evidence upon that subject, not thinking it necessary to go into any h, showing that the Exhibitions had been given to Manchester College, llowed school of Unitarianism; that the Exhibitions have been increased the number originally fixed upon in favour of that College; and that rian Ministers and congregations have to a great extent been assisted; oufining any observation to those which have been proved, because we

did not think it necessary to enter into evidence of the state of the whole; it was sufficient to give some: and as the Defendants have gone into no evidence whatever to rebut the inference, we have a right to presume that some of the others at least were of the same description as this. Not confining themselves to support and foster the more respectable Unitarian establishments, we find them actually administering relief upon that petition which would have been ludicrous and ridiculous, but that it was so crammed with presumption, impiety, and blasphemy,—I mean the petition respecting the Rossendale Chapel, upon the application from which they gave relief to the Cookite, as he called himself, Mr. Ashworth, who has been examined. Such is the mode in which they have administered relief, and the religious test prescribed for the inhabitants of the Almshouses is not suggested ever to have been attended to. In this state the Charity was found at the time of filing the Information, an Information which does, I admit, contain terms which I think are inaccurate, namely, "Unitarian Christian": these words are of course only valuable as far as their meaning goes; their meaning nobody disputes, nobody doubts; but on the part of the Respondents upon the present occasion, I beg your Lordships to understand us as disclaiming the propriety of that designation, or being otherwise than the popular but highly incorrect designation of the persons meant to be described. My Lords, upon this hearing the decision was made which your Lordships have heard, directing the removal of the Trustees upon the various grounds I have already brought under your Lordships' attention, not directing any account of the past; a matter in which, I must say, that Mr. Wellbeloved particularly, one of the Appellants, has been dealt with most remarkable lenity, considering the large sum, 80*l.* a year, which he, a Trustee of these Almshouses for years, has been receiving from the Charity as a poor and godly Minister of Christ's Holy Gospel, a gentleman whose income has been proved to have exceeded 300*l.* a-year, from sources of which the amount is ascertained, independently of other sources of income which exist; directing, even in a case of this description, no account for the time past, but giving all the Trustees their full expenses up to the time of removal. I do not complain of that, but I say never were Trustees who had so conducted themselves dealt with in a more lenient manner.

The Trustees thought fit to appeal, not with any sanction of the Crown, not with any sanction of the Attorney-General, but pointedly putting the Case upon their own merits to continue in the Trusteeship. That Appeal was dismissed, and it was dismissed without the costs, a measure, I again say, of considerable lenity, upon which they have upon the present occasion founded the extraordinary claim of being indemnified in respect of the costs of their own Appeal.

They have lastly appealed to this House after two successive judgments delivered and reasoned in the manner your Lordships have heard. My Lords, is there any reasonable ground for that Appeal? Upon the question of the removal from the Trusteeship I have already shortly addressed your Lordships; it is a mere makeweight; it is a matter of no importance with regard to those as to whom no question could exist as to their continuing or not; but even in that respect the Decree is right; and the main matter in issue upon this occasion is, the propriety of the negative declaration, that persons denying the Godhead of our Saviour were not entitled to participate in this Charity. My Lords, I say upon that, the main ground of appeal, there have not been brought forward any reasonable grounds of argument; everything that could be suggested has been laid before your Lordships, with the greatest ability and learning, by the Counsel for the Crown, who have been selected on the present occasion by the Respondents; anything that learning and ability could furnish has been exhausted upon the present occasion, with what success your Lordships will judge. Your Lordships may perhaps have already formed an opinion when you know that that argument has been mainly founded upon this, that

ledgement of belief in the Scriptures, whatever the interpretation, was nt, and that a pious Nonconformist in the year 1709 was a person m the doctrine of the Trinity was utterly indifferent.

Lords, I now proceed in the last place, to allude to a matter of very and very inferior importance, but upon which I ask your Lordships to ice, the expenses of this Appeal. Are you to throw them upon the Re- nts? Are you to throw them upon the Charity, or upon those who rosecuted this Appeal, after two decisions against them? My Lords, he main question there are those among the Appellants who could not rant. My Lords, I am not imputing to all these Appellants depth of ical learning, or depth of historical or legal research; but I do impute e of them, not to Mr. Wellbeloved only, but to him in particular, full curate knowledge of the history of the Nonconformists, during the ears of the seventeenth and the earlier years of the eighteenth century. ellbeloved, an able and instructed and learned person, could not have norant of what their opinions and doctrines were; he could not have norant what the views and feelings of Lady Hewley were; he has not, re, that apology which an ignorant and uninformed Trustee would I make the same observation with regard to Mr. Heywood, one of the nts, who appears to be a gentleman of station and consideration, edu- I think, at the University of Cambridge, as he tells us; and there are among them to whom perhaps the same observation would apply: nnot have erred ignorantly; they may have supposed Lady Hewley ; they may have considered Bates, Owen, Baxter, and Colton, the nen of those days, and entertaining those particular opinions, they may considered them mistaken; but they could not have erred as to what pinions were. They could not have been ignorant of this, that the less of this Charity must have held Unitarianism in abhorrence. With nowledge,—for upon that I insist, and I insist mainly and strongly,—with nowledge, with historical information upon the whole subject, with the- al information, no doubt, of the most accurate and extensive kind upon hole subject, what have those gentlemen for years been doing? They een applying to purposes wholly at variance with and wholly opposed se for which they must have known this Charity was founded, the pro- left by Lady Hewley in the manner I have mentioned, and as to which nd received the sacred character of Trustees. If they had desired to ipate in the profits of this Charity, why did they not institute an adverse Why did they not exhibit a proper feeling, keeping themselves out of rust? That they might have done, and they might have claimed the t adversely, fairly, and without imputation; but being, as I say they are vith being, men of learning, men of historical knowledge, men of research, ntrude themselves into this Charity to get appointed to the sacred and ential office of guardians of the revenues of this pious lady, for the pur- nd with the intent of misapplying them, in using them in a manner which ould have detested and abhorred, and which in my humble judgment is a of conduct not to be heard of without reprobation. I speak not of the , I speak not of the assertion of right, but I speak of the entrance his Trusteeship, not undertaking the sacred and confidential duties that g to this office, but the predetermined resolution to act in direct con- stion of it. My Lords, the large income, large with reference to this ty and the amount of the objects of it, which Mr. Wellbeloved has re- l for years, the large income which for years the Trustees have applied itarian purposes, were the money of poor ministers of another persuasion, the money of th-- o--h--- to be educated for the ministry, and of their rs left in destitu n. Lords, I am willing to believe that those who knowingly, deliberately and advisedly pursued that course of conduct, not fully viewed the consequences of what they were doing and the nery involved in ; I am willing to believe that; but if they acted with a knov of the consequences of what they were doing, with

a full consideration of the treachery on which they were embarking, being trustees who had undertaken an important trust; if they have done that, I should say there are none who have ever exposed themselves so fully to the scriptural denunciation, entering the field of the fatherless and devouring the house of the widow.

Mr. KINDERSLEY.—My Lords, I appear in this Case in support of the Decree which is the subject of this Appeal with my learned friend Mr. Knight Bruce; and as Mr. Knight Bruce has gone so very largely and fully in detail into the principal arguments of the Case, I mean, and I hope I shall keep my word, to occupy a very inconsiderable portion of your Lordships' time.

My Lords, however wide the scope of the books and authorities may be which have been cited with more or less necessity to your Lordships, the question which your Lordships have to decide I conceive to be an extremely simple one. The question is the construction of certain deeds, in which question of construction all that your Lordships, as I conceive, have to do is, to ascertain what is the intention of the authoress of those deeds; and the only collateral question to that is, in what way you are to arrive at that intention.

My Lords, the Deeds themselves have been read to your Lordships more than once, and therefore I do not mean to occupy your Lordships' time by going through them again in detail. It will be sufficient to say that the object of the Deed of 1704, which is a deed totally distinct from the Deed of 1707, not referred to and still less recited in the Deed of 1707, the Deed of 1704, I say, is simply for this object, and for purposes which are more or less directly connected with it, preaching some doctrine or other, or doctrines generally, according to the argument on the other side, or the preaching of any doctrine or inconsistent doctrines, but still the preaching of something; for even that Trust which is the least near to that specifically, I mean the Trust of the ultimate surplus for the benefit of poor godly persons, still has a certain connexion with the language of the other Trusts, which are clear and in express terms with regard to the provision of preaching. My Lords, the Deed of 1707, as I have said, is in no way whatever connected with the Deed of 1704, unless this may be called a connexion, that there is the same author of the Deed, that there are the same trustees named in the Deed of 1707 as in the Deed of 1704, and that after providing for the primary and specific purpose of the Deed of 1707, which is distinct entirely from the purpose of the Deed of 1704, the next objects declared as the objects of the Trust of the Deed of 1707 are, though without reference to the prior Deed, precisely in the language of the same Trusts.

Now, my Lords, I do not know whether it is meant to be contended by my learned friends on the other side that the Deed of 1707, or anything connected with the Deed of 1707, cannot be brought legitimately to bear upon the construction of the Deed of 1704; but looking at the Deed of 1704 in the first place by itself, and for the purposes of any argument I have to address to your Lordships, it is perfectly immaterial whether they are looked at together or separately. But taking the Deed of 1704 by itself, what have you? You have a charity created by vesting property in certain trustees who are to apply the income of that property for certain purposes pointed out and enunciated in certain terms that have been so often drawn to your Lordships' attention, which are of extremely singular import taken by themselves. I am now confining myself to the Deed of 1704, and if you exclude from your consideration who the individual was who created the Trust at the time of day it was created, what was the position of the world, and particularly the religious world, at that time of day, and exclude everything from your consideration, even the date of the Deed, and look merely at the words of the Deed, what conclusion would be that to which your Lordships must necessarily arrive? Now, my Lords, we have upon this, fortunately, abundance of authorities, which authorities may be considered as summed up in the judgment of my Lord Eldon in the case of the Attorney-General *v.* Pearson; for supposing there had never been any deed of 1707, and therefore no charity for the purpose of the Almshouse, and no book of rules for the regulation of that Almshouse, what would you have to consider then? you

would have to consider the meaning of these terms, "Poor and godly preachers or the time being of Christ's Holy Gospel." When I say those are the terms, do not mean that the other trusts are for the same precise objects, "Poor and godly preachers," but the widows of poor and godly preachers, and the object of promoting the preachers of Christ's Holy Gospel I consider as involved in the same category.

Now, what conclusion must you necessarily arrive at if you confine yourselves, as the Attorney-General says you ought to do, to the four corners of the deed—"Poor and godly preachers of Christ's holy Gospel"? One or other of two constructions must necessarily prevail. It would either be, that it would include every individual religious denomination which professed to take the New Testament as its rule of faith and practice, or it must be confined, as Lord Eldon tells us in the Attorney-General *v.* Pearson it would be confined, to the Church of England. It would include the Papists according to my learned friend's alternative; include the members of the Greek Church, include the members of the Lutheran Church, and include every member of every class of English Dissenters, and would include, as is contended on the other side, those who call themselves Unitarian Christians. Now, my Lords, if that Deed be looked at a little by itself, (and what there is to connect it with the other I am at a loss to understand, except the Trustees and the authoress being the same, and the ultimate Trust of the second being in the same words as the first,) if you are to look at that Deed alone, where is the *locus standi* of the Appellants in any case claiming that they are entitled to the benefits of the Charity created by the Deed of 1704? Courts of Equity have decided that the Trusts thus enumerated must be confined to members of the Church of England. I proceed, then, to consider how it stands with regard to the Deed of 1707, and the accompaniments of that Deed; by which accompaniments I mean the memorandum indorsed upon the Deed, and the Book of Rules referred to in the Deed. Now, in the Deed of 1707, the purposes pointed out differ only in this respect, that there is the creation of the Almshouses as a primary trust. As far as the rest of the Trusts are concerned, every observation which applies to the Deed of 1704 applies to those Trusts. Either, therefore, even upon the Deed of 1707, you must decide that the Appellants, who are claiming no benefit of the Almshouse at all, but claiming the benefit of the Trust that follows the Trust of the Almshouse; either you must decide that they are as much excluded from the benefit of the Trust of 1707 as from the Trusts of the Deed of 1704, or, as a reason why you do not, that you must look to see whether those Trusts, the second Trusts in the Deed of 1707, derive any light or any means of arriving at the construction of them from that which relates to the Trustees for the Almshouse. To any purpose of my argument, it is immaterial which view is taken; but I suppose, inasmuch as the not looking at the Trust of the Almshouse to assist in the construction of the other Trusts, would exclude the Appellants from the Trusts in that Deed as well as the Trusts of the Deed of 1704, I will suppose that it is contended, and at all events it has not been disputed on the other side, that that must be the very foundation looked at, and that you are to look at that which relates to the Trusts of the Almshouse in order to assist you in construing the other Trusts. Now, you will recollect that the Trusts for the Almshouse are these:—By Deeds of even date certain premises have been vested in the Trustees, and there is a Deed declaring the Trusts. The first Trust is, that a certain messuage and premises comprised in the conveyance to the Trustees should be by them permitted to be for ever used and enjoyed for and as an hospital or habitation for poor people, in such manner as the same now is, or at the time of the decease of Lady Hewley shall happen to be, used or enjoyed, but subject to such orders, regulations, provisos, and appointments as are hereinafter mentioned or referred unto concerning the same. Then a further Trust is, that after paying all costs, charges, and expenses, including rent, and so on,—(I do not carry your Lordships through

all the words)—which may be incurred in forming the Trusts with regard to the occupation of these presents for the purpose of the Almshouse, and in providing catechisms for the poor people of the said Hospital or Almshouse for the time being, or in, for, or about the defence, and so on: they are then, out of the rents of the rest of the property, to raise the clear yearly sum of 60*l.* over and above all taxes, charges, deductions, and reprises whatsoever, and pay, distribute, and dispose of the same clear yearly sum of 60*l.* to and for the only benefit, advantage, maintenance, and support of such poor people as Lady Hewley, during her natural life, hath placed or shall place, or which the Trustees and Managers for the time being, or any four or more of them, shall from time to time place, elect, or put into the said new-built messuage, hospital, or almshouse, in such proportions, at such times, and to such uses, purposes, and intents as Lady Hewley hath appointed or declared, or at any time hereafter during her life shall nominate, appoint, or declare, in any writing or writings signed with her own proper hand or in any book or books, collection or collections of rules, orders, directions, or articles made, collected, or appointed to be made, collected, or appointed, by Lady Hewley or by her order signed, or to be signed by her own proper hand, for the better ordering, choosing, and government of the said poor people in the said Almshouse.

Then it goes on to direct, that of those persons nine out of the ten to be appointed shall be widows or unmarried women not under fifty-five years of age; and if they can find a trusty male who can assist them in their readings and devotions, they are to have such; if not, the tenth is to be a female; so that all that there is there, is only with reference to the management of the Almshouse, to the Book of Rules, or the collection of orders or some other writings which Lady Hewley has given or may give to regulate the Almshouse. Now, my Lords, I do not trouble you here by adverting to that part of the Deed that relates to the appointment of Trustees, for Mr. Knight Bruce has done that so fully. It would be an expense to the Trust if, every time a Trustee died, a new Deed was made to vest it in the new Trustee in the room of the one deceased. Accordingly she says, Appoint Managers in the place of the deceased Trustees, who shall have the same authority, and only differ from not having the estate vested in them: when two or three are dead, it may be worth while to go to the expense of a Deed, and you shall vest the management in the Managers and Trustees jointly. Nothing turns upon that, and it is passed over.

Now, what have we? All which is here referred to is the Book of Rules, and as far as the Deed itself, or anything connected with it, is concerned, they are immaterial according to the admission on both sides. What have you to assist you in arriving at the intention of the Foundress? We have here a book of printed rules in the Appellants' Appendix, containing, first of all, the rules and orders to be observed by the Trustees, and the major part of them. The only part it is necessary to read through (I am afraid I am only reading what has been read, and it is impossible to avoid it altogether,) is near the end of the first passage, where she says, "Let all the poor people to be elected into and placed in the same Almshouse, be either poor widows or women which were never married, of the age of fifty-five years or upwards, to the number of ten poor women, except when the said Trustees can find out a fit married man (whose wife is sober and pious,) whom they may judge able and willing to read God's holy word, or any other pious discourse, to the said hospitallers, and to pray with them daily evening and morning, and who may be admitted without scandal; he, with his wife, may be received to make the tenth poor person in the said Almshouse." Now, my Lords, it is quite clear from this, to go no further, that with reference to this Almshouse, letting alone all consideration of the Trusts for the preaching of Christ's Holy Gospel, that even with reference to this Almshouse, religion was the predominating consideration in the mind of Lady Hewley; religion,—I am not now saying what particular sort of tenets, what particular denomination of Christians,—

but religion was the strong predominant feeling in her mind in reference to this matter of the Almshouse, which has the least necessary connexion with religion. Now, then, we have here, without at all hinting at the knowledge derived from history, and the knowledge derived from the vast variety of sources, the pious character of this lady,—you have, upon her own showing, this important matter. Now, does she or does she not stand in the situation of a person who, being devoted to religion, shown to have been at that time deeply pious and deeply anxious to promote the piety of others, in that state in which you could expect her to say, All I meant is that they should take the Holy Scriptures and never enunciate or have enunciated anything but in the language of those Holy Scriptures, believe in the divinity of the second and third persons in the Trinity, according to the Church of England or the Presbyterian Creed, or not believe in it; that it was immaterial to her whether those whose piety she was anxious to promote worshiped the same God she worshiped, or worshiped a different god, whether the persons denied the divinity of that God whom she worshiped, or considered her, as your Lordships find some Unitarians at least did consider the rest of the Christian world, or rather I should say the Christian world, as idolizing; I say, can you believe, to go no further, that a lady whose object was thus religious, could, according to everything we have had in the experience of the constitution of the human mind, be at that time in that state of most extraordinary latitudinarianism? But, my Lords, of course, as your Lordships are well aware, the rules do not stop there. They go on in the second branch to specify the "rules and orders to be observed about the qualities or qualifications of the poor people to be elected into the said Almshouse from time to time." Now, my Lords, I shall only trouble you with reading first of all that passage in which she says, "Let none of evil fame or report be admitted into the Hospital, but such as are poor and piously disposed, and of the Protestant religion." Here your Lordships see that at all events she was not completely latitudinarian; she was not so latitudinarian that she would say a man taking up the Holy Scriptures without note or comment can arrive at the conclusion that the doctrine of transubstantiation is a true doctrine, that the invocation of saints is not only permitted but directed, that marriage and absolution, and so on, are sacraments ordained by Christ himself, and so on, meaning to mention certain broad points of doctrine upon which the Papists differ from the Protestants: I say, at all events we have it here established that her latitudinarianism, as it is called, had its limit; it had so its limit at all events in excluding those who entertained one class of errors, even though they might conscientiously entertain them and profess to derive them from the study of the Scriptures and the Scriptures only: "Almsbody be one that can repeat by heart the Lord's Prayer, the Creed and Ten Commandments, and Mr. Edward Bowles's Catechism, and that they shall duly repair to some religious assembly of the Protestant religion every Lord's day, forenoon and afternoon, and at other opportunities, to attend the ordinances of God,"—by which, no doubt, she means the Lord's Supper.

Now, my Lords, you have here mentioned, at all events, four different (if I may respectfully use the term as applied to them) instruments to which you must refer to ascertain the intention of the Foundress, even according to the most strict and straight rules with respect to evidence, because she has referred to them herself as if they were in the body of the deed. She has referred to the book of rules, and the book of rules refers to them as a qualification or test of the parties to be admitted. I do not stop to inquire into the argument which has been wisely abandoned here, though it was adopted in one stage, that the intention was that they might repeat as by heart, without implying anything like an assent to them on the part of those persons; and it is quite a curious speculation to show who have been concerned in this Cause, to mark in the several stages it has gone through (I have been concerned in two only,) the mode in which the course of argument has varied. In one stage, towards the final decision, the arguments addressed varied so materially from the arguments

addressed in the first instance, one might hardly be able to recognise the same cause. But, my Lords, let us see whether the documents thus referred to do or do not show what Lady Hewley's intention was, at least as far as the Almshouse is concerned; I am confining myself to that. The Lord's Prayer, of course it would be admitted from the very nature of it and the position of the author of that prayer at the time it was delivered, could not and does not enunciate any particular doctrines, I mean with regard to the Trinity; the Ten Commandments of course do not necessarily with reference to the period at which they were promulgated; but then when we come to the two other documents, the Creed and Edward Bowles's Catechism, I conceive that they stand upon a very different footing. I do not stop to discuss whether this lady, who is stated by the Appellants themselves to be a Presbyterian, when she speaks of the Creed, means the Presbyterian Creed, a Creed which had been deliberately after solemn assembly composed by the greatest divines of the Presbyterian persuasion at Westminster, whether she meant that Creed which was the Creed of the sect to which according to the Appellants' own statement she belonged, or whether she meant the Apostolic Creed comprised in the Liturgy of the Church of England.

Lord BROUGHAM.—Does that form of Creed constitute any part of the Assembly's Catechism?

Mr. KINDERSLEY.—No, but——

Lord BROUGHAM.—I beg pardon, I misunderstood you.

Mr. KINDERSLEY.—At that time the Assembly of Divines did four things: they revised, as it is called, fifteen out of the Church of England Articles; they then proceeded to draw up a Confession of Faith or Creed; thirdly, they prepared the Assembly's Larger Catechism; and fourthly, the Assembly's Smaller Catechism. The whole statement of these details is contained in Neal's History of the Puritans and in the history of the day. Now, of course, if Lady Hewley when she spoke of a creed meant the creed of her own persuasion or denomination of Christians, there is an end of the whole question, because, without troubling your Lordships by referring you to the creed of the Presbyterians and the Confession of Faith, as it is called, prepared by the Assembly of Divines, every one will admit that I need not refer to the thing itself to show it is in a most distinct and positive form. In the way of details it is more detailed than the Articles of the Church of England; it enunciates the Trinity in Unity, the personality as well as Godhead of the Son and the Holy Ghost, and in terms at least as strong as the terms used by the Articles of the Church of England, enunciates the doctrine of Original Sin, the doctrine of the Atonement, the doctrine of Justification by Faith alone, the doctrine of God's Decrees, the Calvinistic doctrine with regard to Predestination and Election, which I do not presume of course to go into in detail: I say every one of these doctrines, which Mr. Wellbeloved in his Sermons tells us that the Unitarians reject as utterly unscriptural, is enunciated in terms distinct and positive, and detailed in that Confession of Faith.

Now, my Lords, it is not at all necessary for my argument, but I would merely ask upon what foundation is it that my learned friends on the other side call upon your Lordships to assume, for the purpose of giving the Unitarians the benefit of this Charity, the proposition that by the Creed Lady Hewley meant any other creed than the creed of her own persuasion? And before your Lordships can decide, supposing it was possible for me to conceive your Lordships could decide, that the Unitarians are to have this, you must decide that Lady Hewley did not mean to exclude the creed of the Unitarians. I pass that, and proceed upon the assumption that Lady Hewley did mean the Apostles' Creed, as comprised in the Liturgy of the Church of England.

Now let us consider a moment at this time the question, not whether, according to the disputation of learned, ingenious, and subtle men, you may make out that the Apostles' Creed may be looked at as not enumerating the Trinitarian doctrine,—the question is not that, but the question is, in what light did

ridual who required that creed to be learned by heart by the persons to
e benefit of this portion of her Charity, in what light did that individual
he Apostles' Creed, what did she consider that creed as enunciating?
all know that one of the most celebrated and most read works upon
d is that of Bishop Pearson. At the time when Lady Hewley created
rity, in 1704, it had appeared in no less than six editions, and Bishop
's work upon the Creed, your Lordships know,—whether rightly or not,
all part of my argument,—Bishop Pearson professed to deduce from that
enunciation of every one of the Trinitarian doctrines. I am referring
lusively to this one book, because Mr. Knight Bruce referred to various
thors. There is an infinite number of other authors, I do not mean to
nfinite number who comment upon it in that way, but a number of
who show that that was the view they took of it; and when I say au-
mean of that class and professing the same faith with those for whose
his Charity was founded. I am confining myself to this work because
en from that time considered a standard work, and treated as the best
of the best commentaries upon the Creed, not only by that church to
Bishop Pearson belonged, but it is referred to by Calamy and other
formist writers as a work containing a good exposition of the Creed.
e it is all very well for any one to say now, as has been said by the
r-General, speaking for Mr. Wellbeloved, that the Unitarians, or at
Arians, may use the Apostles' Creed because it does not enunciate in
e divinity of Jesus Christ or of the Holy Ghost; that I say is going
ide the question. The question is, when Lady Hewley tells you they
ke the Creed, assuming she meant the Apostles' Creed, how did she
e Apostles' Creed to be understood, and what was her view of the
' Creed to be used?
he observations that apply to Bowles's Catechism are more important,
g from the details of the language and the references contained in that
m; and I will now, with your Lordships' permission, draw your atten-
Bowles's Catechism, and to do so, and to save your Lordships' time, I
only point out, which I shall be able to do very shortly, that that Ca-
is distinctly a Trinitarian catechism, and contains the leading doctrine
tarianism, but I shall take the opportunity of comparing with Edward
Catechism the Confession of Faith, if I may so call it, which Mr. Well-
has given us in his further answer to the original Bill, and I think your
s will find rather a curious speculation arises in that comparison; and
so I shall take an opportunity of throwing in another Confession of
Mr. Wellbeloved's which we find contained in Mr. Wellbeloved's ser-
rinted before this discussion ever arose.
ords, Edward Bowles's Catechism, as your Lordships are aware, is
n page 135 of the Appellants' Appendix, and also in the Respondents'
x; but as you have been hitherto referred to this, it is convenient to
this, correcting one or two mistakes in the printing, one of which has
nted out. The beginning of the Catechism refers, as you would expect,
istence of the Creator, the existence of God, and then proceeds thus,
s of question and answer, with regard to the doctrine of Original Sin.
ot, of course, to your Lordships suggest that the doctrine of Original
doctrine maintained by the Trinitarians and repudiated by the Unita-
nost I may say, as of necessity. "In what condition did he (that is
tor) make man?—Righteous and happy. Did man continue in that
No, he fell from it by sin. What is sin?—Transgression of the law of
What was the sin of our first parents?—Eating the forbidden fruit.
as the fruit of that eating?—It filled the world with sin and sorrow.
condition is the posterity of our first parents born?—In a sinful and
condition. Wa u born in that condition?—Yes, I was conceived
d am by nature a child of wrath as well as others. Hath thy life been

better than thy birth?—No, I have added sin to sin, and made myself above measure sinful. What if thou shouldst die in the condition thou wast born and bred in?—I should perish everlastingly."

Then, my Lords, it proceeds, according to the natural course of such a Catechism, to point out the means of justification and the means of salvation in this way: "Is there no way to get out of this sinful and miserable estate?—Yes. Is it to be done by any power or righteousness of thy own?" testing, therefore, that doctrine as connected with Original Sin and man's moral impotence; "Is it to be done by any power or righteousness of thy own?—No; but God in his rich mercy hath appointed a way. What way hath God appointed?—Only by Jesus Christ. What is Jesus Christ?—The Son of God, manifest in the flesh." Then, my Lords, after proceeding through a few more questions, it proceeds thus: "By what means may a sinner obtain a part in this redemption?—By faith in Christ;" making, therefore, Justification by Faith one of the leading articles of this Catechism. "What is it to believe?—To rely on Jesus Christ, and him alone, for pardon and salvation, according to the Gospel. How doth the Gospel teach us to rely on Christ?—So to cast our burden upon him as to take his yoke upon us. Why hath God appointed faith to this excellent use?—Because faith gives him what he looks for, the whole glory of our salvation. How is faith wrought in the soul?—By the Word and Spirit of God." Then, my Lords, it proceeds again to express the doctrine of man's moral impotence, arising from the state of Original Sin, in this way: "What doth God look for from his redeemed people?—That they should walk before him in holiness and righteousness. Have we strength of ourselves so to walk?—No; without Christ we can do nothing." Then, rather further on, on the subject of the Sacraments, mentioning two, Baptism and the Lord's Supper, it proceeds thus: "What is baptism?—It is a dipping or sprinkling with water, in the name of the Father, of the Son, and of the Holy Ghost. What is the nature of this Sacrament?—It represents and (through faith) seals the sprinkling of the blood of Christ, and the washing of the Holy Ghost. What is done in baptism on our part?"—pointing out the Trinitarian doctrine of the Atonement, and then proceeds thus: "Why must we watch?"—this is towards the close: "For two reasons; first, because we walk in the midst of our enemies, the world, the flesh, and the devil." I need not remind your Lordships that the existence of the devil is one of the doctrines denied and repudiated by the Unitarians.

Now, my Lords, even in the language of the Catechism itself, although I admit there is no sentence which expresses these words, "Jesus Christ is God" or "the Holy Ghost is God," yet there is that which any man, even with a moderate share of experience in questions connected with this most important subject, would say at once, as the witnesses all have said, who are men of learning and experience upon the subject, This is distinctly and exclusively a Trinitarian catechism. But, my Lords, if you look to the texts which are cited, and which in every edition which has ever been published of Bowles's Catechism are printed with it as a component part of the Catechism, if you look at those texts you find that those texts do enunciate most distinctly the doctrine of the Godhead of our Saviour. I need only remind your Lordships of that one passage in one of the Epistles to Timothy, "God manifest in the flesh." All the observations made of there being some ancient manuscripts of the Greek Testament in which, owing to the obliteration or mutilation of a part, controversies have arisen whether a certain word was written ΘΣ, with a little mark through the centre of the circle, making it ΘΣ, or whether it was an omicron and a sigma without a mark in the centre, OΣ,—all these controversies are controversies with which, unless you suppose Lady Hewley not only to have been conversant with them, but to have formed her conclusion in opposition to the opinions of all the leading and learned and pious men of her own denomination, and that it meant that which no edition of the Bible declares it to mean, unless you arrive at that conclusion, the controversy existing about the particular

Greek manuscript in question is a controversy wholly beside the question. Of course you are aware that the date of Lady Hewley's foundation is 1704. There had been published some dozens of editions of the English Bible, some dozens, I believe I am right in saying, of the English Bible; and out of those dozens, how many would your Lordships suppose contained the version of that text in Timothy which is here contended for, instead of Θεος "God was manifest in the flesh," Ὁς "who was manifest in the flesh," how many of those published in Lady Hewley's day, and to which you may suppose she had accidental access, had that version? Not one, not a single one; not a single version of the English Testament (and I believe no one published edition of the Greek Testament, though upon that I cannot speak so accurately,) contained the version in question. Your Lordships have been referred by Mr. Knight Bruce to a Bible printed a few years before Lady Hewley's Foundation, either as being the edition, or similar to those editions, which Lady Hewley may have been in the habit of using.

Mr. ATTORNEY-GENERAL.—Since the translation in the time of James, the translation has never varied in the least degree.

Mr. KINDERSLEY.—It is singular, before the translation of James, there was none in which this view of this passage is contained, not even in a marginal note.

But now I will take the liberty of referring your Lordships to the further answer of Mr. Wellbeloved to the original Bill, as it is contained in pages 52 and 53 of the Appellants' Appendix; and doing that, before I proceed to the details, I would just refer your Lordships, not for the purpose of reading it, to the joint and several second further answer of the other defendants, in which, being called upon in the same way that Mr. Wellbeloved was, they refer to this answer of Mr. Wellbeloved as containing their views and their opinions.

Now let us see what Mr. Wellbeloved says with reference to the doctrine, or rather the non-doctrine, of the Unitarians. He says that the sense in which the term Unitarian is used in said information not being defined, defendant is unable to set forth whether he is an Unitarian in his religious belief and doctrine in the sense in which it is there used. Then, after proceeding with other matters, he says, in using the term Unitarian as applicable to himself, he means more especially to denote that he believes and professes the following Christian doctrines, that is to say,—then he begins in this way: "That to know God to be the true God, and Jesus the Christ whom he sent is eternal life," which of course is a quotation from the language of Scripture, and so on going through that page. Mr. Wellbeloved's Confession of Faith, if one may call it so, or the enumeration of Mr. Wellbeloved's Articles of Faith, are contained in this way; there are not the references, and you would not expect to find the references to the particular texts quoted. I have gone through those passages, and had them put down in the different parts from which those texts are quoted; and considering that it has been said that Edward Bowles's Catechism ought not to be looked at or considered as a Trinitarian catechism, one would naturally expect that some considerable portion of the texts that are cited as enunciating his faith would be the same as those that are cited by Mr. Bowles in his Catechism. Now in the string of texts quoted in Edward Bowles's Catechism, which are cited by Mr. Wellbeloved in this enunciation of his faith, only four, four only are the same in Bowles's Catechism and in Mr. Wellbeloved's Confession of Faith. And now I will take the liberty of drawing your Lordships' attention to one or two of those instances in which the same passage has been referred to in both. My Lords, among other passages in which Mr. Wellbeloved enunciates his faith, in which he nowhere says he does not believe in the second and third persons of what is called the Trinity by the Trinitarians, and that he does not believe the doctrine of Original Sin and the Atonement, and so on, but he quotes the passages, and among others this passage, (this is in page 53 of the Appellants' Appendix,) that "God so loved the world that he sent his only begotten Son into the world, not to condemn the

world, but that the world through him might be saved." Now your Lordships do not require to be told that that passage is composed of quotations from two verses of St. John's Gospel; the first branch of the passage is, "God so loved the world that he sent his only begotten Son into the world;" that is from the 16th verse of the 3rd chapter of Saint John, and the last passage from the 17th verse. Now, upon turning to that passage, I wish to draw your Lordships' attention to the peculiarity of a portion of that passage being purposely omitted; the importance of that passage appears in the language itself: "For God so loved the world that he gave his only begotten Son." Why not, as it goes on to say, in Mr. Wellbeloved's quotation, "not to condemn the world, but that the world through him might be saved;" but "God so loved the world that he gave his only begotten Son, that whosoever believeth on him should not perish, but have everlasting life;" which your Lordships see is omitted. I am of course not imputing anything but the intention of Mr. Wellbeloved to enumerate his own doctrines, but he has omitted God sending his Son into the world for the purpose of man believing in him and being saved by his faith. Then in the next verse comes the passage which is added, "For God sent not his Son into the world to condemn the world, but that the world through him might be saved."

Now, my Lords, there is another passage, which is one of those contained both in Edward Bowles's Catechism and Mr. Wellbeloved's answer, which I think is of considerable importance. The passage I am now going to refer to is a passage which is not contained in Mr. Edward Bowles's Catechism, but a passage referred to by Mr. Wellbeloved; and I wish to show your Lordships how it is referred to. The passage is that which begins the new paragraph in page 53 of the Appellants' Appendix, and it is this: "That this defendant acknowledges Christ as the image of the invisible God, the first-born of every creature, in whom it pleased the Father that all fulness should dwell." Your Lordship sees that Mr. Wellbeloved is proceeding here to enunciate those opinions which he held respecting Christ. Now that passage consists also of two parts, one of which, the former, is from the 15th verse of the 1st chapter of the Epistle to the Colossians, and the second branch of it is from the 19th verse of the same chapter, omitting the intermediate 16th, 17th, and 18th verses. Now, my Lords, either that omission exists because those intermediate verses were not material for the purpose of stating any view of the office or nature of Christ, or they were omitted because the party could not state those as containing his belief. Now, if your Lordships will allow me to read the passage, you will see how important that omission is; I begin with the 15th verse, which is cited by Mr. Wellbeloved: "Who is the image of the invisible God, the first-born of every creature;" and then it goes on thus, which is omitted entirely, "For by him were all things created that are in heaven and that are in earth, visible and invisible, whether they be thrones or dominions, or principalities or powers, all things were created by him and for him: and he is before all things, and by him all things consist: and he is the head of the body, the Church, who is the beginning, the first-born from the dead, that in all things he might have the pre-eminence." And having omitted these three verses, there follows the verse that does next succeed in Mr. Wellbeloved's statement: "For it pleased the Father that in him should all fulness dwell."

Now, my Lords, the observation that I make upon this sort of passage is simply this:—The proposition on the part of Mr. Wellbeloved and of the Appellants generally is, that they are Presbyterians, that it is the paramount principle of the Presbyterians not to have anything like the enunciation of a creed in language made by men, but only to enunciate it in the language of Scripture itself,—and therefore I should have supposed that when you were enunciating your faith with respect to Jesus Christ, and you found a passage consisting of five verses, every one of which is most important as expressing something with reference to Jesus Christ, as being before all things, as creating all things and all things consisting by him, and so on,—I should have

ht that the same principle which required the Presbyterians, so called, unciate nothing but what is in Scripture, would have also required hey should have enunciated the whole of any passage that is in Scrip- and that the omission of a part of a passage which is of vast import- was as much a departure from that avowed, or rather that suggested ple of the Presbyterians, as it would be, and still more than it would be, empt to enunciate your creed in your own language, considering it as ible, from Scripture.

w, my Lords, I say that this sort of passage is a test of the justice of argument which has been so strongly, and at length, urged upon your ships,—the main foundation, I may say, of the attempt to induce your ships to set this Decree aside,—that the present Unitarian body, or, as call themselves, the present Presbyterian body, hold the doctrine of the nount importance of Scripture, and Scripture only, and if they will allow add the whole of Scripture, as that which is to be the subject of belief; Lady Hewley held that proposition; and that that is maintained by all reat body of Presbyterians of that day: I say, that I cannot but consider supposing they are right in that argument, supposing they are right in g that that was the proposition maintained by the Presbyterians of Lady ey's day, I say that, if this be the mode in which the present Presbyte- enunciate their creed, they depart from that principle altogether, and o more Presbyterians in that principle than they are Presbyterians in hing but the assumption of the name.

w, my Lords, I have mentioned one instance in which a text referred to r. Bowles is also one of those referred to by Mr. Wellbeloved; I will mention another, the 14th verse of the 2nd chapter of the Epistle to . Mr. Wellbeloved says, that among other things he believes is this, it there is one God, and one Mediator between God and men, the man it Jesus, by whom God hath reconciled us to himself; who was made sin s that we might be made the righteousness of God in him, who gave elf for us that he might redeem us from all iniquity, and purify unto him- peculiar people zealous of good works;" the last branch of that sen- being a quotation from the 2nd chapter of the Epistle to Titus and the verse. Now, my Lords, this 14th verse is only a part of the passage, it of importance as enunciating something with reference to our Saviour: hole passage is this, "Teaching us, that denying ungodliness and worldly we should live soberly, righteously, and godly in this present world; ng for that blessed hope, and the glorious appearing of the Great God Our Saviour Jesus Christ; who gave himself for us that he might re- us from all iniquity, and purifying unto himself a peculiar people us of good works." Now, that which is so important, the looking for lorious appearing of the Great God and Our Saviour Jesus Christ, is the passed over; but the branch of the sentence that is contained in the verse is tacked to a branch of another sentence, taken from some totally ent part of the Scripture. My learned friend Mr. Knight Bruce has dy observed to your Lordships that nobody entertains any doubt, at no Christian, that in the passage which I have referred to, the words eat God" and "Our Saviour" refer to the same person, τοῦ μεγάλου καὶ σωτῆρος ἡμῶν Ἰησοῦ Χριστοῦ, putting the pronoun after the two sub- ives, and no article in the second case, as applying to καὶ σωτῆρος Ἰησοῦ τοῦ, the article being the same as that which applies to μεγάλου, and the ἐπιφάνειαν indicates the personal manifestation. But we are not here to ss the meaning of passages, but to see in what way different parties have those passages. Now, my Lords, in that same passage I have been eferring to, is this quotation from the 2nd Epistle to the Corinthians, the hapter and 21st verse, "Who was made sin, that we might be made the eousness of God in Him." Now, your Lordships will recollect, in the itself, and without any controversy as to the authenticity of the text,

the words are, "Who was made sin for us who knew no sin," that is, He who knew no sin, "that we might be made the righteousness of God in Him." The passage "who knew no sin" is omitted, and I may remind your Lordships, that one of the doctrines of Unitarians, whether the whole body or a great portion, is denying the impeccability of Christ's nature.

My Lords, I will refer your Lordships to another passage in which there is, as I conceive, a very important omission from the text itself, which is this: Mr. Welbeloved has this passage, "And whom having become obedient to death, God highly exalted, giving him a name above every name, that at the name of Jesus every knee should bow, and every tongue confess that Jesus Christ is Lord, to the glory of God the Father." Now he has omitted there after the words "that at the name of Jesus every knee should bow," these words, "of things in heaven," or of "*things* in heaven," for the word things is written in italics to show that it is not in the original of "things in heaven, and things in earth, and things under the earth." And it is curious that in what is called the "Improved Version," published by the Unitarians, though those words are given, there is this note for the purpose of explaining them and for the purpose of course of leading students to judge for themselves what is the true interpretation. They say "things in heaven, and things in earth, and things under the earth," mean the different gradations of persons and stations of society in this world.* But it is rather curious, the omission of that passage by Mr. Wellbeloved from the very middle of the rest of the passage which he has cited.

Now, my Lords, your Lordships having before you the passage in Mr. Wellbeloved's answer which contains that confession of faith, I will refer you to one or two passages in Mr. Wellbeloved's sermon, which was printed and published before this question arose. Among other passages, he says, (this is the beginning of a sermon which was preached before the association of Unitarian Christians residing at Hull, Thorne, Lincoln and adjacent places, at the Chapel in Bow Alley Lane, Hull, on Thursday, the 18th of September, 1823,) "It is perhaps scarcely necessary to observe that those of us who are not attracted hither by curiosity, but are assembled according to our annual custom for the purpose of promoting what we conceive to be the interests of religious truth, are distinguished from all other sects of the professed disciples of Christ, not by the practice of any peculiar forms of discipline, but by the rejection of certain doctrines which are deemed sacred by all around us, and universally represented as essential to future salvation. Seriously and, as we conscientiously think, impartially examining the word of God, and putting out of our view all the misguiding creeds and confessions of fallible men, we have been led to believe that the Godhead is strictly one, that Jehovah, the creator of all things, the governor of all worlds, 'the God and Father of our Lord Jesus Christ,' is the only God, the sole object of religious adoration. We abandon, not merely as unintelligible but as unscriptural, all the curious distinctions which have been invented respecting the divine nature, as consisting of three distinct persons mysteriously united in one, or of three characters, three properties, three modes, or three subsistences, whether referring to any internal relations of the Deity to itself or any external relations of the Deity to mankind; and we keep steadily to the plain and intelligible doctrine and language of the Jewish and Christian scriptures, openly testifying that 'to us there is but one God, the Father, of whom are all things and we in him, and our Lord Jesus Christ, by whom are all things and we by him,' 'one God, and one mediator between God and men, the man Christ Jesus.' With the doctrines concerning the deity of Christ, we also reject as equally unscriptural those, which other Christian sects hold to be of such vital importance, relating to his office and the design and consequences of his death. We see nothing in the pages either of the Old or New Testament, to justify the doctrines which are generally deemed orthodox,

* The note in the Imp. Ver., ed. 1817, is "i. e. all mankind of every condition and degree." Ed.

relating to original sin, the total corruption of human nature, the moral impotency of man, or the means of obtaining the Divine favour." Your Lordships have, no doubt, in your minds the passages in Bowles's Catechism. "We cannot adopt, because they appear unsupported by the authority of Scripture, the notions which generally prevail concerning the doctrine of atonement, and much less those concerning satisfaction, imputed righteousness and the efficacy of the merits of Christ. Other opinions, also, of minor importance, connected with those which I have now mentioned and necessarily arising out of them, we refuse to receive, as not only unworthy of the divine character and in their effects unfavourable to human virtue and happiness, but as utterly devoid of support in the language of either Jesus or his apostles." Now, your Lordships cannot, I think, help contrasting the clear, distinct and positive enunciation of the creed of Unitarians, as here in this sermon propounded by Mr. Wellbeloved, by stating all that they reject as unscriptural, though all other Christians hold them; you cannot help, I think, contrasting that with the statement which is here given in the answer, of the profession in the Unitarians' faith, which consists in this—not boldly, as was done in the pulpit, enunciating those doctrines which are rejected and saying that we hold them to be utterly unscriptural, but merely quoting some dozen or more isolated passages from scripture referring to the manhood of Christ, and saying, There is my confession of faith and what the scriptures contain I believe: but still more, you cannot help contrasting these or indeed either of these confessions of faith contained in Mr. Wellbeloved's answer and his sermon with Mr. Edward Bowles's Catechism, for the purpose of your Lordships judging whether, on the form of doctrine contained in Mr. Edward Bowles's Catechism, Lady Hewley, thinking those doctrines essential to salvation, being so much impressed with the necessity of them as to require that the members of the community which she founded in those almshouses should make them the foundation of their study and faith,—whether you can at the same time say that it was consistent with her views of Christianity, consistent with her views of the means and method of salvation, and consistent with her views of promoting the preaching of Christ's holy gospel, that persons maintaining the opinions of Mr. Wellbeloved should be as much, just as freely, and perhaps even more freely because of their latitudinarianism, the objects of her bounty, as those who preached the doctrines which are to be found in Mr. Bowles's Catechism. Mr. Wellbeloved says that he, being a Presbyterian, like all Presbyterians, will never enunciate his creed except in the language of Scripture, or have any creed but the words of the Bible; how consistent is he with that declaration, when we find him in his own pulpit, and to his own congregation, without hesitation, in language very appropriate and apposite of his own, not in the language of Scripture, enunciating his faith! I confess I am at a loss to understand him: I can only attribute it to one or other of two things,—either Mr. Wellbeloved is not a Presbyterian, such as Presbyterians really were or are, or if Mr. Wellbeloved is a Presbyterian then the real Presbyterians do not hesitate to confess their faith in other language and other forms of confession than those which are a mere enunciation of the language of Scripture. My Lords, I do not think it is necessary to trouble you by reading many passages from this sermon. We have among the exhibits, besides that sermon, another sermon of Mr. Wellbeloved's—

LORD CHANCELLOR.—You will postpone your argument 'till to-morrow.

TUESDAY, 25th JUNE, FOURTH DAY.

Mr. KINDERSLEY.—My Lords, I was yesterday proceeding in pointing out that Bowles's Catechism, which is the Catechism referred to in the rules and orders, was in the first place very distinctly, not only upon the extrinsic evidence of those who are the most competent judges of the matter, but upon anybody's perusal of it, a Trinitarian Catechism; and I took the opportunity, while I was upon that Catechism, of comparing with that Catechism and the doctrines contained in it, the confession of faith contained in Mr. Wellbeloved's answer, and also I was referring by way of comparison to some one or two of Mr. Wellbeloved's sermons.

My Lords, I will only refer to one other passage in another sermon of Mr. Wellbeloved's, which was preached in January 1825, at St. Saviour Gate Chapel, York, in aid of a subscription for the erection of a Unitarian Chapel at Calcutta; and in the course of that sermon he takes occasion to meet an observation, which had been repeatedly, as he says, made, that while other Christians were very zealous in disseminating the Gospel among Heathen nations, the Unitarian body had been very remiss in their exertions in that way; and he says, among other justifications of the Unitarian body, that it was natural they should not be so zealous in the cause, for that they did not consider the importance of it so great as those who considered the knowledge of Christ and faith in Christ to be essential to salvation. He says, "First, it may be observed that we do not feel the same impelling motives by which the zeal of other sects is excited into such prompt and vigorous action; we do not interpret, as others do, the declaration of our Lord to his apostles that he who believed not on him should be damned; we do not think that none will be saved unless they call upon themselves the name of Christ; we cannot so read either the book of nature or the book of grace as to learn from either that God brings his rational children into existence under a sentence of eternal misery from which faith in Christ alone can redeem them." My Lords, I will just take the opportunity of referring to Bowles's Catechism, because the language so completely in the one furnishes a contradiction to the precise language of the other. In Bowles's Catechism it is said, "I was conceived in sin and am by nature a child of wrath as well as others. I have added sin to sin and made myself above measure sinful. What, if thou shouldst die in the condition thou wast born and bred in?—I should perish everlastingly. Is there no way to get out of this sinful and miserable estate?—Yes. Is it to be done by any power or righteousness of thy own?—No, but God in his rich mercy hath appointed a way. What way hath God appointed?—Only by Jesus Christ." Then again, "By what means may a sinner obtain a part in this redemption?—By faith in Christ." My Lords, Mr. Wellbeloved goes on, continuing the same course of observation; he says, speaking of the Heathen, "yet deeply as we commiserate their condition and unfeignedly as we should rejoice to see it changed and improved by the universal diffusion of the gospel, the urgency of the case cannot appear so extremely great to us as it must appear to those who believe that every soul out of Christ will perish everlastingly."—My Lords, there is one observation which occurs very strongly upon reading these sermons of Mr. Wellbeloved, and the sermons of Mr. Kenrick, and all the sermons which have been published by any of these gentlemen,—that when they are asked, as they are asked by this information, whether they are Unitarians, and what are Unitarian doctrines, they profess to tell us they do not know what we mean, that the sense of the term Unitarian not being defined by us, they are unable to give us a specific answer; they say, We are Presbyterians, we may hold some doctrines of what you call Unitarianism, and we may dispute others—but what you mean by Unitarian doctrines we really are at a loss to understand. And having examined, as we have examined, two or three gentlemen of the Unitarian persuasion, ministers of that persuasion, in the cause, particularly a gentleman of the name of Hincks, Mr. Hincks in answer to the question, whether

there is not a class of Dissenters who are commonly called Unitarians?—says, "Not knowing what you mean by the question, I am unable to give you an answer." Now, my Lords, one would suppose that when the same persons who profess to call themselves by the name of Presbyterians, who insist that they are Presbyterians, and nothing but Presbyterians, and true Presbyterians, meaning by that, men holding Presbyterian principles, one would suppose that from their pulpits when they were addressing their congregations of Presbyterians, the language would repeatedly and constantly occur, of "my Presbyterian brethren," "we Presbyterians," and so on; but my Lords, remarkable as it is, in every single sermon of Mr. Wellbeloved, or of Mr. Kenrick, and indeed any other sermon I have ever seen from Unitarians, or gentlemen who belong to that denomination, the term Presbyterian never occurs, from the text to the conclusion, nay, even in the title-page of the printed sermons themselves the term Unitarian is the term they always use in speaking of themselves, and in speaking of their congregations and to their congregations. Their doctrines they call Unitarian doctrines, they speak of "our faith, our views," and distinguish themselves from all other Christians in respect of maintaining what they over and over again call Unitarian doctrines; and yet, strange to say, my Lords, these same individuals who use this language in their pulpits and in their published sermons, who never dream of calling themselves Presbyterians among their people, now tell us they are Presbyterians and nothing else but Presbyterians, profess to tell us that until we define what we mean by Unitarian, they are unable to say even whether there is so much as a sect commonly called Unitarian.

My Lords, in referring to Bowles's Catechism and comparing it with Mr. Wellbeloved's confession of faith, I stated to your Lordships in the outset, that of a large number of texts referred to in Mr. Bowles's Catechism, four only were referred to by Mr. Wellbeloved; and I stated to your Lordships that out of those four, no less than three of them, when quoted, omitted most important parts. In the quotation I made from Mr. Wellbeloved's answer, I stated to your Lordships two of them; the third, which is of course in the same page, 53, of the Appellants' Appendix is, I find, from the 2nd Epistle to Timothy, the 1st chapter and the 9th and 10th verses. I will just state to your Lordships what the omission is. The passage as it is in the original translation is this: "Who hath saved us and called us with an holy calling; not according to our works but according to his own purpose and grace, which was given us in Christ Jesus before the world began, but is now made manifest by the appearing of our Saviour Jesus Christ, who hath abolished death and hath brought life and immortality to light through the Gospel." In quoting that, Mr. Wellbeloved omits the passage, "which was given us in Christ Jesus before the world began," and the words "now made manifest," and quotes it thus: "That this Defendant believes that the purpose and grace of God was made manifest by the appearing of Jesus Christ, who hath abolished death and brought life and immortality to light through the Gospel." So that out of four passages referred to by Mr. Wellbeloved, in three of them there are omissions of the most important parts of the passage, and, particularly, as your Lordships will recollect, in the quotation from the Epistle to the Colossians there are three verses, intermediate between the two consecutively quoted, omitted, having the most important meaning with reference to the nature and office of Christ.

Now, my Lords, I have hitherto, as your Lordships will recollect, dealt with the Case upon the footing of excluding all evidence, for the purpose of showing the particular opinions or any opinions of Lady Hewley, beyond that which you find referred to in the very instances themselves; and if the Case were to go no further, if no reference were made to anything beyond what I have hitherto been touching upon, I submit to your Lordships, that the Appellants are in one or other of these two predicaments; either they must say that the Trusts of the first Deed of 1704, and all the Trusts of the second

Deed of 1707, except the Almshouses, are to be dealt with upon the simple words of those Trusts, and with reference to nothing else; in which case they are completely excluded from all benefit by the rule which would give it to the Church of England,—not that either side here is contending for the Church of England, but that is the consequence of that alternative of the contention: if, on the other hand, and I have no objection to adopt this alternative, you are to say, that by the reference, with regard to the Trusts of the Almshouses, to the Rules and Orders, you are to look for and find something by which you are to construe, not only the Trusts for the Almshouses, but the other Trusts of the Deed of 1704, and also the Trusts of the Deed of 1704, I then submit to your Lordships, that there is the most clear evidence upon the Deeds themselves, coupled with that reference, that—Lady Hewley having in view the propagation of doctrine, preaching, and not simply worship, having that in view, being a person deeply impressed with the importance of religion, devoting during her whole life, and still more largely to take effect at her death, large portions, and perhaps you may say the whole, of her property, for that very purpose,—finding that she refers to a catechism as well as to the Apostles' Creed, as furnishing a rule, a catechism which it cannot be disputed is a Trinitarian catechism, it being evident that she is Trinitarian,—it is impossible to believe that when she meant to propagate the Gospel of Jesus Christ, it is impossible to suppose but that she must have intended, and must be taken to have intended, legally taken to have intended, that the preaching which she intended to encourage, and which her Trust was created for the purpose of encouraging, was the preaching of that God whom she herself worshiped.

Now, my Lords, I will address myself, but very shortly, because that has been already gone into by my learned friend, Mr. Knight Bruce, who preceded me, to the question which has been raised on the other side, as to the admissibility of evidence for the purpose of ascertaining what Lady Hewley was. It is contended on the other side, that it is against the rules of law to admit extrinsic evidence to explain a written instrument, which, my Lords, as a general proposition, I suppose that nobody will ever be found hardy enough to deny. The case of Doe *v.* Chichester, and similar cases, are cited for the purpose of showing that courts of law cannot receive extrinsic evidence for the purpose of saying, though the testator or the author of the deed has said so and so, in point of fact he meant something different from that. But, my Lords, I am sure that I am only stating a proposition which will equally receive the assent of everybody, when I say that, notwithstanding that rule, or rather I should say, that consistently with that rule and almost as a correlative to that rule, this rule equally prevails,—that in order to expound an instrument, the expounder must be as much as possible in the situation of the author of the instrument. My Lords, that is not merely a rule of law, it is a rule of the most obvious common sense, it is a rule which will apply not only to questions of law, but to questions of history, and to every question you please to suggest, to everything which is the subject of the exertion of the human mind. Where you have to find out and expound the meaning of a written instrument, that which any human being would say would be, 'If I want to know what this person meant by saying so and so, before even I look at his words, let me ascertain who he was, let me surround myself with all the circumstances with which he was surrounded, put myself as much as possible into his position, and then, standing on the same ground, the language he addresses to me will be that which, in all probability, I can hardly fail of understanding in the sense in which he expressed it.' My Lords, Mr. Knight Bruce has in his argument noticed many instances in which this is a case of common occurrence; I do not mean to repeat them, but will merely content myself with referring to a work to which your Lordships have been already referred, which is considered by everybody a most excellent summary of the law on the admissibility of extrinsic evidence in the construction of written instruments—I mean Mr. Wigram's little treatise, which has not only the merit of being

most perspicuous and clear and distinguishing with the greatest clearness different propositions, but has the very great merit of being extremely short, as most very meritorious works are.

My Lords, I really shall take the liberty of assuming the proposition I have been stating, but I shall have the less hesitation in assuming it, because the Appellants themselves in their own Case, I was going to say unwillingly, but I mean from the common necessity of the Case, from adopting simply the course which every human being would adopt in this and every other case, the Appellants in the very first page and sentence of their Case adopt the proposition which I am defending; for what are the first words of the Appellants' Case? "The Suit in which the present Appeal arises was instituted for the purpose of regulating a charity founded at the beginning of the last century by Dame Sarah Hewley;" there they should have stopped, according to their own argument, but they add, "a lady belonging to the class of English Dissenters called Presbyterians." Now, my Lords, what does that mean? How did she belong to a class of English Dissenters called Presbyterians? because she maintained the same opinions as the class of English Dissenters called Presbyterians, that is the only meaning of that. How is a man a Protestant? because he entertains Protestant opinions. How is a man a Papist? why, he entertains opinions favourable to Popery. How is a man a Presbyterian? why, because he entertains the opinions and doctrines of the Presbyterians. There is nothing very remarkable in this; it is not that the Appellants have been unwittingly led to it, as it were into a trap; not that we can have laid a trap for them, for the case is their own; it is the common course they have taken—no human being could state the case without stating the manner in which it originated; and in referring to the Deed in question by which this Charity was founded, they must state that it was founded by somebody, and then it was natural to say by whom it was founded. But, my Lords, not only so, but your Lordships will recollect that a great portion of the arguments and the statements and observations of my learned friends on the other side have consisted,—of what? of citing passages from various authors to your Lordships; for what purpose? for the purpose of telling you what were the opinions of Baxter, and Calamy, and Howe, and Williams, and John Milton, and twenty other persons. They have given evidence to show you what were their religious opinions, and their opinions on questions connected with religion. That, they say, is perfectly legitimate; that for the purpose of expounding an instrument made by A., it is perfectly legitimate to give you evidence of the opinions of B., C., D. and E.; but if you come to put anything in evidence which will show the opinions of the founder of the deed, that is quite contrary to all the rules of evidence; that you will better apply yourself to the construction of the deed by knowing the opinions of other persons who never saw the deed, who were not parties to the deed, who, for aught which appears, never knew of the deed,—than you will, by knowing the opinions of the party who was the actual creator of the deed. But, my Lords, that is not the true view to take, that would be indeed a most absurd proposition to maintain. Why is it, let me ask, of importance to ascertain the opinions of Presbyterians, and to know what they say of their own opinions, but not of importance to ascertain Lady Hewley's opinions, because they say she was a Presbyterian? The only way in which the opinions of the Presbyterians or of the Nonconformists of that day can have any bearing upon the question, any more than the opinions of forty Pundits would have, is because Lady Hewley did belong to one, and did not belong to the other class; and when you use the term "belonging," you mean that she did entertain the opinions of the one, and did not entertain the opinions of the other; otherwise, I might bring evidence to show the opinions of the English Papists of the day, or the opinions of any other class. It would be absurd to do so, and why? not because they were less parties to this Deed than the Presbyterians whose opinions are cited, but because Lady Hewley did not belong to them, because their opinions were not the opinions of Lady Hewley. The very fact, therefore, of citing, as my learned friends have done hour after hour, and making it

the greatest part of their argument, of which the whole mass of this Blue Book consists, I was going to say, or rather professes to consist, of different works showing the opinions of other persons,—the whole of that is based upon the foundation of the proposition, that it is of importance that your Lordships in coming to a conclusion as to what is the true construction of these Deeds should do what you do in every other instance, endeavour to put yourself in the position of the party who framed it, and then indeed you are enabled to come to a just conclusion. Now, my Lords, I say, that by precisely the same rule, and for precisely the same reason the opinions of the Presbyterian body at large, or of individual Presbyterians, are of importance, for the same reason and by the same rule the opinions of Lady Hewley herself are of importance; and for the same reason and by the same rule, evidence which is admissible for the one is admissible for the other.

But, my Lords, supposing that there were not one particle of evidence for the purpose of showing the particular and individual opinions of Lady Hewley, beyond that which is assumed as the fact on both sides, assumed as the fact by the Appellants, that she was a Presbyterian and Nonconformist, supposing there were nothing more, I say then that I submit to your Lordships, that upon what has been laid before you there is the most abundant evidence to show that the class of Presbyterians or Nonconformists, and Lady Hewley as one of them, would have considered it a thing most abhorrent to them to have supposed that this Charity ever should have been devoted to the spread of opinions such as those which are entertained, whether rightly or wrongly, by the gentlemen who have latterly held this trust in their hands.

My Lords, my learned friends on the other side have produced to you a long series of documents for the purpose of showing, if they can show, that at some period the Presbyterians began to be great opponents of anything like creeds, contending, of course, for the paramount importance and the exclusive importance of the precise language of Scripture as expressing any article of faith; and they say, and the object of some of their quotations is (how far they effect that object your Lordships will be able to judge,) in part to show, that in point of fact so strongly did the Presbyterian body entertain this view, that it would have signified nothing to them, in comparison with the maintenance of that, any of their body adopting Unitarian sentiments, or the sentiments of the Papists, or any sentiments whatever, provided only he professed to deduce them from the language of Scripture. The great mass of the quotations which are referred to in this book are quotations from the works of those who were in this position, —they were differing from the Church, and they were differing from each other in respect of matters of discipline, and, perhaps, as to one or two of the classes, in respect to some extremely minor points of doctrine, not in the remotest degree affecting or approaching any one of the great doctrines of Trinitarianism, and I mean not merely the doctrine as enunciated by the Trinity in Unity, but I mean all those other doctrines of Original Sin, Atonement, Justification by Faith, and man's moral impotency, and so on, which are considered the great leading doctrines of Trinitarianism. That was their position. Your Lordships will find that many of them, and perhaps the great mass of them, and many of them most excellent and pious men, were ardently aspiring after union and peace, that is, that those points of difference which separated the Dissenters from each other, and the Dissenters from the Church of England, should, if it were possible, be done away with. My Lords, that in writing and arguing for that object, many of those who were earnestly desiring it should express themselves in language which if you separate it from the context might have the appearance of being what is called Latitudinarian is not to be wondered at; but, my Lords, what I have to complain of in this Blue Book of quotations is, in the first place, the extraordinary course pursued; a Supplemental Appendix, as it is now called, because it has no other name, consisting of this bulky volume, is without any previous communication to us, suddenly on the very day on which this Case begins to be argued, placed in your Lordships' hands: there would have been no objection to that, containing simply quotations from various

writers, which quotations were meant to be read by my learned friends on the other side, and as the convenient mode of reading those quotations, of course there could be no objection to that, though I think that even in that case such a supplemental appendix ought to have been handed over to us; but, my Lords, what do we find this to consist of, a simple string of quotations? Your Lordships have the document before you, and you will find that it consists of a running historical and argumentative commentary, joining together and coupling the various passages which are quoted, but in many instances making assertions without any quotations at all.

My Lords, I wish just to draw your attention to one or two at the most of the passages in this; I will just refer your Lordships to the marginal paging of this document (for there is no paging at the top), page 21, at the beginning of a new head, for they have digested it into different heads, "On general relaxation of doctrinal opinion." Now, this is the way this begins: "The writings of Grotius and after him of Le Clerc upon the continent, are referred to as having begun to produce a very sensible effect on the Protestant section of the Christian world, to show the difficulties which environed truths which in the age before had been thought unquestionable; and to give increase of confidence to those few persons who, in the seventeenth century, had fancied that they perceived in what is called the Socinian view, the true view of the Gospel of Christ." Reference is also made to the works of Bishop Jeremy Taylor, Chillingworth, and Hales of Eton, as men who contended for the liberty of private interpretation, and at the same time had presented to the world notions of Christian truth very different from those embodied in the Assembly's Catechism, (which in 1644 was the symbol of faith which the Presbyterians had sent forth,) or in the Savoy Confession (the symbol of the Independents)—a reference in the gross to all the works of Grotius, Le Clerc, Taylor, Chillingworth and Hales, for the purpose of inferring from them a statement most important for the view which is attempted to be set up on the part of the Appellants.

But, my Lords, let me refer your Lordships to another curious instance further on, where the marginal figure is 47, and near the close of that section which ends with 47, there is this passage, not a quotation, but the editor's passage: "Though Calamy was himself a Trinitarian, and has published in its defence, we find him engaged in conjunction with a number of ministers in carrying on a course of lectures on a Tuesday evening at the Old Jewry," —that is a quotation from Calamy,—then it goes on, "(the chapel afterwards of Dr. Rees, an Arian). Among these ministers are Drs. Lardner and Chandler, of heterodox reputation." The object of this passage is to contend that Calamy, admitted on all hands to be most orthodox, admitted on all hands to be a most leading member of the Nonconformist party, admitted to communion, and even joined in lecturing in the same spot with, a body of ministers, in which body were found Dr. Lardner and Dr. Chandler, of heterodox reputation. Now, my Lords, it is curious to see how the fact stands upon this subject. True it is, that Calamy was one of the ministers who preached or delivered lectures at that place; true it is, that Dr. Lardner was also one of the ministers who delivered lectures at that place; but Dr. Calamy not only had ceased to preach or lecture there, but had ceased to preach or lecture anywhere, for he was removed from this world four or five-and-twenty years before Dr. Lardner published his celebrated treatise on the Logos. That was the first enunciation and the first indication of his entertaining opinions that were not orthodox, twenty-four years after Calamy was dead. It is true that an individual who was one of those congregated ministers did, at the end of twenty-four years, put forth a work that first announced him to the world as not entertaining strict orthodox opinions. And, my Lords, this is not a quotation. Your Lordships see that there is no such quotation to be found in any book, but it is a statement in this paper which is put in under the guise of a Supplemental Appendix, a statement made for the purpose of maintaining a particular argument.

Now, my Lords, my learned friend Mr. Knight Bruce having, by that list of quotations and references to works, shown your Lordships not only the strict and sturdy orthodox opinions of the Nonconformist body, that is to say, the individuals who were the most eminent of the Nonconformist body of that day, but having shown your Lordships, that so far from thinking that it was of minor importance what opinions a man maintained, provided he derived them from the language of Scripture, that they looked with actual abhorrence upon the doctrine of Socinianism, that they would no more have entertained in religious communion Socinians, than they would have entertained Mahomedans or Papists, that they did not consider them as Christians. To take the instance of Baxter, admitted in all times to be, if I may use the expression, the apostle of Nonconformity; he classes them over and over again with Mahomedans, with Sadducees, with Infidels, over and over again describing them as belonging to a class not to be tolerated by the civil magistrate, any more than to be tolerated by the class who were orthodox.

My Lords, I say that my learned friend Mr. Knight Bruce having gone through all that, I am not going to trouble your Lordships by travelling over the same ground, but I will take the liberty, in connexion with that, of referring your Lordships to what was done by the Presbyterian body. You find what was written and what was argued and what was felt and considered, by all the leading members of the Nonconformist body, but now let me draw your Lordships' attention shortly to what the body, as a body, did. Your Lordships know that the sittings of the Assembly of Divines commenced in 1643; of course, the Act of Uniformity being long after this, that assembly was an Assembly of Divines of the Church of England. That Assembly of Divines met at Westminster, and after some years of sitting, for I think they did not promulgate their Confession of Faith and Catechism till the year 1648, or thereabouts,—my learned friend the Attorney-General is kind enough to suggest to me 'whether they were divines of the Church of England?'.

Mr. ATTORNEY-GENERAL.—The Church of England for the time being.

Mr. KINDERSLEY.—Your Lordships will understand what is meant by that expression. The Act of Uniformity not having passed, they were the divines of the Church of England, by which I mean that they were the incumbents of the various parishes, and also holding the different offices of dignity and trust in the Church, as the Church then stood. If my learned friend means that changes may have taken place in the constitution of the Church of England since, my observations have nothing to do with that; all I mean to say is, that they were the divines of the Church of England who were distributing spiritual assistance and instruction throughout the country. They met, (and this, my Lords, I am simply taking from Neal's History of the Puritans, as being of more frequent reference,) and the first object of their labours was a revision of some of the Articles of the Church of England, and they went through as many as fifteen of them, and in every one of those there is not one single modification even in the slightest degree of any one of the doctrinal Articles of the Church of England. The doctrine of the Trinity in Unity, for example, is enunciated in precisely the same language, with the simple addition of one or two words, making it rather more explicit and strong; and so on with regard to the other leading articles. With your Lordships' permission I would just as a specimen read one. Neal gives them with the Church of England Articles in one column, and what were called the revised Articles by the Assembly in another. Now your Lordship will probably recollect the Church of England Article with respect——

LORD CHANCELLOR.—What do you quote from?

Mr. KINDERSLEY.—The 3rd volume of Neal's History of the Puritans, in the edition of 1837. I am quoting from the Appendix; the second article is this as revised: "The Son, which is the word of the Father, begotten from everlasting of the Father, the very and eternal God, and of one substance with the Father, took man's nature in the womb of the blessed Virgin, of her substance; so that two whole and perfect natures, that is to say, the godhead

and manhood, were joined together in one person, never to be divided, whereof is one Christ, very God and very man, who for our sakes truly suffered most grievous torments in his soul from God, was crucified, dead, and buried, to reconcile his Father to us, and to be a sacrifice, not only for original guilt, but also for the actual sins of man." My Lords, that is word for word the language of the Church of England Article, with the exception that there are two additions; the words "for our sakes" are added: the Church of England having only "who truly suffered," they have added, "who for our sakes truly suffered;" and they have added, "most grievous torments in his soul from God." With those exceptions, the language is word for word the same, and I merely mention this as a specimen of the rest, because I do not think it will be fair to trouble your Lordships for the purpose of proving that which will not be denied, that the same observation applies——

Mr. ATTORNEY-GENERAL.—My Lords, if it will save my learned friend any trouble, I am most ready to admit that the Assembly of Divines who met at Westminster were strict Trinitarians and strict Calvinists. I am ready to admit that the authors of the Confession of Faith not only entertained those sentiments, but were strongly of opinion that there ought to be a test applied to all who were to be admitted to their communion.

Lord BROUGHAM.—And that the Church of Scotland, which adopts it as their Creed or their Thirty-nine Articles, is the most Trinitarian and Calvinistic church existing in Europe?

Mr. ATTORNEY-GENERAL.—Yes, my Lord; and the Larger Catechism is the standard of confession.

Lord BROUGHAM.—It is their standard, and signed by everybody; the professors sign it.

Mr. KINDERSLEY.—I am much obliged to my learned friend for his admission. I will simply add this, that of course it will not be disputed that that Confession of Faith, which is extremely long, not divided into any chapters, is, I will not say no where in the language of Scripture, but is ninety-nine one-hundredths of it not in the precise language of Scripture; and I think, besides the Confession of Faith, the two Catechisms are of exactly the same character, with this only exception, that the Shorter Catechism is of course much more contracted, but still distinctly enunciating the same doctrine, but not in the language of Scripture.

Then, my Lords, that having been done, and this being published about 1648, an ordinance of Parliament was promulgated on the 2nd of May, 1648, by means of and through the influence of the Presbyterians, which I will take the liberty of drawing your Lordships' attention to; it is stated by Neal in the 3rd volume, page 508, and I will, as it will be the shortest way, simply read the short statement that Neal gives of it: "To return to the Parliament, which was now recruited with such Presbyterian members as had absconded,"—

Lord BROUGHAM.—Are you reading from Neal or the Abstract?

Mr. KINDERSLEY.—It is from Neal.

Lord BROUGHAM.—That which you have in your hand looks to me like the Abstract.

Mr. KINDERSLEY.—It is in four volumes.

Lord BROUGHAM.—There is an edition in four volumes, which is not the original neither, but an abridgement.

Mr. KINDERSLEY.—The title of this is "The History of the Puritans, or Protestant Nonconformists, from the Reformation to the death of Queen Elizabeth," with so and so, by Daniel Neal, reprinted from the text of Dr. Toulmin's edition.

Lord BROUGHAM.—What is the date of that?

Mr. KINDERSLEY.—1837, my Lord. "To return to the Parliament, which was now recruited with such Presbyterian members as had absconded or deserted their stations, while the army was quartered in the neighbourhood of the City, these gentlemen, finding they had the superiority in the House, resumed their courage, and took the opportunity of discovering their principles

and spirit by passing such a law against heretics as is hardly to be paralleled among Protestants. It had been laid aside by the influence of the army for above nine months, but May 1 it was voted that all ordinances concerning Church Government referred to Committees be brought in and debated, and that the ordinance against blasphemy and heresy be now determined, which was done accordingly. This was one of the most shocking laws I have met with, and shows that the governing Presbyterians in these times would have made a terrible use of their power if it had been supported by the sword of the civil magistrate. The ordinance is dated May 2, 1648, and ordains 'That all persons who shall willingly maintain, publish, or defend by preaching or writing the following heresies with obstinacy, shall, upon complaint or proof by the oaths of two witnesses before two Justices of the Peace, or confession of the party, be committed to prison without bail or mainprize till the next gaol delivery; and in case the indictment shall then be found, and the party upon his trial shall not abjure his said error and his defence and maintenance of the same, he shall suffer the pains of death, as in case of felony, without benefit of clergy; and if he recant or abjure, he shall remain in prison till he find sureties that he will not maintain the said heresies or errors any more; but if he relapse and is convicted a second time, he shall suffer death as before. The heresies or errors are these following: 1. That there is no God. 2. That God is not omnipresent, omniscient, almighty, eternal, and perfectly holy. 3. That the Father is not God, that the Son is not God, that the Holy Ghost is not God, or that these three are not one eternal God, or that Christ is not God equal with the Father. 4. The denial of the manhood of Christ, or that the godhead and manhood are distinct natures, or that the humanity of Christ is pure and unspotted of all sin. 5. The maintaining that Christ did not die nor rise again, nor ascend into heaven bodily. 6. The denying that the death of Christ is meritorious on the behalf of believers, or that Jesus Christ is the Son of God. 7. The denying that the Holy Scriptures of the Old and New Testament are the word of God. 8. The denying of the resurrection of the dead and a future judgment.'" Those are the errors, my Lords, any one of which, if not recanted, according to the Presbyterians who procured this ordinance, who had just concluded their Confession of Faith, was to be punished with death. Then it goes on, which I need not trouble your Lordship with, to enumerate some minor articles of error, for which they inflict minor punishment.

Now, my Lords, this then was the principle and spirit, as Neal says, of the Presbyterian body of 1648. My Lords, in 1658, ten years after the promulgation of the Confession of Faith of the Presbyterian body, they or at least one of the three great bodies, the Independents or Congregationalists, thought that they would have their Confession of Faith; and accordingly they met at the Savoy: this is what Neal tells us. I need not trouble your Lordship with reading the details of it; and after a good deal of debate, which was in the first place to consider whether they should simply adopt the Confession of Faith of the Presbyterians or have a distinct one of their own, they determined upon the latter; and then they published their Confession of Faith, which, as Neal tells us, and as any one may see by comparing the one with the other, is almost verbatim in everything material with the Confession of the Assembly of Divines at Westminster in 1648: of course, upon matters of Church Government, they had different articles in their Confession of Faith, because they had differences upon the subject.

My Lords, during this period, as appears by all the histories of the times, Neal's and others, the Presbyterian body feeling themselves not only to have no difference with the Church of England in respect to doctrine, and really but very little difference comparatively in respect to Church discipline, inasmuch as to "Priest" and "Presbyter" the one is only the other "writ large," they were very anxious to join the Church of England, and to be included with them; and the history, Neal's or Hallam's, or any other history that your Lordships choose to refer to, will show that they were constantly endeavour-

get the Church of England, after the Restoration of Charles in 1660, nit them; and they went so far as this,—they procured the Crown to ·ize a meeting, which was also held at the Savoy, between the Presby- body, in which I may observe that Mr. Baxter took a leading part, ·rtain divines of note and distinction of the Church of England. That ence was held for the purpose of seeing whether they could not agree some form of Church discipline, for that was all that was in the way of ich should enable the Presbyterians to join the Church of England. ords, at this time the Church of England was in the ascendant, the ·terians were no longer a powerful body of divines; and, as perhaps be expected, the members of that conference who were of the Church gland treated the members of the Dissenting body with great haughtiness ·en with what was approaching to insult; and though they went through rm of a conference, the discussions that took place there, after going on onsiderable time, ended, as might be expected under the relative circum- s in which the parties were placed, without coming to anything; but ıe Presbyterians at that time were desirous as a body (and it is of im- ıce to know what are the views and acts of the party,) of becoming a ›nent part of that Church, of course a principle of which is having arti- f religion, that is a Confession of Faith, and Creeds, and Liturgies.

1662, the year after that conference, the Act of Uniformity passed, which I not trouble your Lordships by referring to, as it has been already re- to by Mr. Knight Bruce, the effect of which was the ejectment from ivings of somewhere about two thousand ministers, probably the very individual divines who had been parties, and we know that many of were, to the framing of the Confession of Faith of the Assembly of es.

1672, a Lecture was established at Pinners' Hall, at which members of dependent or Congregationalist body and the Presbyterian body preached ıer or alternately at certain intervals, but some discrepancies arose be- them a few years afterwards, and a new Lecture was established by one at Salters' Hall, and has continued, I am not sure up to the present day, ›r a very long period. But, my Lords, in 1688, and as we know very through the instrumentality, or at least with the approval, of the Pres- an and Independent body, that is with the then Dissenting or Noncon- ıt body, the Toleration Act was passed, which Toleration Act, however, ns, as your Lordships are well aware, the provision against the denial Trinity.

n, my Lords, came in 1691 the attempt at what is called The Happy ı, that is to say, an attempt between the body of Presbyterians and the ›f Independents or Congregationalists, to unite together to frame that in ape of a Confession of Faith or Creed, or whatever it may be called, should embrace both. And my learned friend Mr. Romilly reminds me Mr. Strattan, who is one of Lady Hewley's trustees, signed this very do- ıt to which I am now about to refer; he was a member of one of the ›odies, and was an actual party to this. Now, my Lords, the heads of greement are given in a work that has been already quoted, I believe by ırned friend on the other side, at all events has been quoted in the course › argument, I mean Calamy's Life of Baxter. In the first volume of the ı which I have, which is the edition of 1713, at page 476, it begins, and several articles the eighth chapter or section is this; this is page 482: ı confession of faith. As to what appertains to soundness of judgment tters of faith we esteem it sufficient that a church acknowledge the Scrip- to be the word of God, the perfect and only rule of faith and practice, wn either the doctrinal part of those commonly called the Articles of the h of England or the Confession or Catechisms, Shorter or Larger, com- by the Assembly at Westminster, or the Confession agreed on at the ', to be agreeable to the said rule." This is the act, my Lords, of the reat Nonconformist bodies, the Independents and the Presbyterians, at-

tempting a Happy Union, attempting that which is to be as Catholic as they can make it, to embrace both; and they themselves say that it is not sufficient for a church to acknowledge the Scriptures as the word of God, and the rule of faith and life, but they should own either the Doctrinal Articles of the Church of England, or the Confession of Faith, or the Catechism of the Assembly of Divines, or the Confession of Faith of the Independents given at the Savoy, every one of which, as your Lordships know, is the most distinct and positive enunciation of every one of the doctrines of the Trinity. And this, my Lords, is the act of those who we are told on the other side cared nothing about confessions of faith, nay who would not hear of confessions of faith, who considered that you ought never to enunciate your confession of faith, except only by using the precise terms of Scripture. Then in the next section, the ninth, "Of our duty and deportment towards them that are not in communion with us," they say, "We judge it our duty to bear a Christian respect to fellow Christians, according to their several ranks and stations, that are not of our persuasion or communion;" and then they say, "That such who appear to have the essential requisites to church communion," which requisites have been just enunciated in the eighth section, "we shall willingly receive them in the Lord, not troubling them with disputes about lesser matters."

Now, my Lords, the Toleration Act having passed in 1688, in 1693, only eleven years, as your Lordship sees, before Lady Hewley executed these deeds, the St. Saviour Gate Chapel at York was registered under the Toleration Act; it was registered or licensed to have the service of God performed in it, under the proviso contained in the Toleration Act with respect to the denial of the Trinity. It is admitted on all hands, and if not admitted it is proved, that Lady Hewley was a member of this congregation up to the time of her death, and that her intimate friend and spiritual adviser, and I think one of her executors, was the minister at that chapel.

In 1698 came the Act against Blasphemy; and your Lordships will not, I believe, in any one of the writers referred to on the other side, I mean such men as Baxter*, Calamy, and so on, find any one that considers that the Blasphemy Act was any other than it ought to have been, according to the sentiments and opinions which they maintained, not only their own abstract opinions of religion, but their opinions with respect to the interference of the civil magistrate upon the subject.

Well, my Lords, we have now approached to within six years of the date of the first Deed, which was 1704. Now then, let me with confidence, and at the same time with respect, take the liberty of asking your Lordships what foundation there is for saying that the Presbyterian body, or the Nonconformist body, were those who rejected confessions of faith, who would not hear of confessions of faith, who considered confessions of faith against their principles and against their views. True it is that the Presbyterian body objected to the civil magistrates imposing upon them, provided they did not deny the doctrine of the Trinity, civil tests; unquestionably, I believe, it is perfectly true that the same individuals who imposed the penalty of death in 1648 for denying the doctrine of the Trinity, the same individuals said, though the doctrine of the Trinity is denied, if we are Christians you ought not to impose any civil test upon us which is a religious test; but to say that the Presbyterian body had not, and did not adopt, and did not use, and did not insist upon as their own confession of faith, that very confession of faith which asserted the doctrine of the Trinity, is contrary to every part of our history down to the time that Lady Hewley executed these Deeds. Lady Hewley died in 1710, at a very old age, I believe the age of eighty-three; she had lived all through those times, and had witnessed all those transactions, and was intimate with and the bountiful benefactor of those who had suffered by the Act of Uniformity in 1662. She was one whose whole life was devoted to the subject. She knew what Baxter was doing in attempting the union with the Church of England, for, according to Neal,

* Baxter died in 1691.—Ed.

was the agent employed to negotiate that Union. Her whole life being
, to their service, surely it is a monstrous strain upon your Lordships'
:o be asked to come to the conclusion now suggested, because you can
uring the course of the 18th century, even during the early period of
ntury, even during the latter portion of the 17th century, the same in-
ls began to be more averse to that which they were suffering from,
, such an Act as the Act of Uniformity, who did not object to it be-
t required an assent to a doctrinal article, but because there were cer-
ings in Church Government they could not agree to. It is true, my
the same persons were most zealous against the imposition of tests,
ll as a body they no more rejected creeds, they no more rejected con-
s of faith, they no more objected to what they had done themselves
half a century before, than they did in the middle of the eighteenth cen-

Lords, I think it has already been made matter of observation to you,
Lady Hewley, as one of the Presbyterian body, entertaining the opinions
ted to the Presbyterian body, was so averse to anything like that which
ated a creed or a confession of faith or anything approaching to it, how
it to pass that the same individual has actually imposed such a test with
ce to what? with reference to the alms-bodies to be admitted into the
ouse: they are not to be admitted but upon the condition of learning by
creed and catechism; I am not saying what creed or catechism, but a
because the argument is that Lady Hewley was of such enlarged and
inarian views that she would not care whether those persons entertained
ian views or not. How comes it to pass that she does that which ne-
the proposition that appears to have been maintained on the other side?
, my Lords, up to this time I have touched upon no evidence that has not
dduced on the other side; but now I bring one, and I contend I have a
o bring in according to the rules of evidence, though it is not necessary
purpose, of those pieces of evidence. I admit they are not very strong,
is not probable they should be. Evidence of the individual opinion of
Hewley derived from the expressions in her Will, evidence derived from
pressions in the sermon preached upon her funeral, and other matters of
ort, I do not go into the detail of them; they have been read and are in
pendix of the Respondents: but without that, I conceive the case is abun-
strong for us. The Case is one which I conceive resolves itself into this:
eing asked to construe a deed, which deed is not a deed merely giving
ty to A. and B., but giving property for a particular and religious pur-
and finding, as the Case says on the other side, that that person was of a
religious persuasion, all we have asked of the Vice-Chancellor and
Chancellor was, that they should say that the intention of Lady Hewley
early manifested to give it to the Preachers of Trinitarian doctrines, and
was against her purpose to apply it to the preaching of Unitarian doc-
; and all we are asking of your Lordships is to affirm that proposition.
Lords, I think that some considerable weight is due also to the recollec-
f the state of the law at the time. Now, of course, the state of law may
d in more ways than one in this Case: but the state of the law, using it
lowest sense in which it can be used, was this—here was the Blasphemy
s well as the Toleration Act, prohibiting under the severest penalties the
of the Trinity. Under the Toleration Act Lady Hewley's own chapel
egistered. Now, carrying the arguments arising from the state of the
o higher than this, can you suppose that the same person who saw that
of the law,—and we have a right to suppose approved of it, for the body
longed to approved of it,—did she venture to say, looking forward with a
t ken to the rapid progress which the march of intellect has made, 'What-
e the doctrines that that body may have originally preached, that I mean
the scope of my charity.'
learned friends on the other side, particularly the Attorney-General,

think they derive considerable force in their argument upon this subject from the few words used in the Deed; of course anything used in the Deed is of the last importance; the words I refer to are in the Declaration of Trust, "for the time being." The Attorney-General contends that when Lady Hewley speaks of "poor and Godly Preachers for the time being" of Christ's Holy Gospel, that means whoever shall preach anything they profess to derive from the Scriptures, and which, in the successive changes that the legislature may make in the law, they may be suffered to preach.

Let us see the meaning of these words, "poor and Godly Preachers for the time being of Christ's Holy Gospel." We carry it no higher than its own meaning, so long as they continue "poor and Godly Preachers of Christ's Holy Gospel." But let me take your Lordships to the next few words, and "to such poor and Godly Widows for the time being of poor and Godly Preachers of Christ's Holy Gospel." Widows for the time being: I suppose your Lordships will construe the words "for the time being" in the same way where they appear in one place as in the other; then she was, according to the argument on the other side, looking forward and contemplating the law to mean widows of a different class of persons, or persons termed widows different from those who in her days were widows. What did she mean by those words? Why, to be sure, so long as they continued widows. Is there any other sense to be applied to the words? Does it mean those who according to law for the time being in its successive changes shall be widows? It means so long as they continued widows. Then are you to say that the words "for the time being," which can only have that meaning there, are to have a different meaning in the next preceding member of the same sentence, "Poor and Godly Preachers for the time being?" What did she mean? That as long as they were "Poor and Godly Preachers for the time being" they are to have it; but when they cease to be so they are to cease to have it, the same as the widows. And I was surprised at the triumph of my learned friend in referring to this so often, as if he seemed to found himself upon it.

But let us just go a little further. These words occur a dozen times in the Deed: "To such and so many poor and Godly Preachers for the time being of Christ's Holy Gospel: to such poor and Godly Widows for the time being of poor and Godly Preachers of Christ's Holy Gospel: at such time and times and for so long time or times and according to such distributions, as such Trustees and Managers for the time being—" Again, "as aforesaid or any four or more of them shall think fit," and so on. Then we have again overleaf, page 4, the Treasurer spoken of, "for the time being;" he is to do so and so and have such and such privileges: that means, so long as he shall continue Treasurer, not supposing that a new class of persons would be made Treasurers under any change of the law, but the person who was Treasurer and continued.

My Lords, the observation I have made with regard to the existing state of the law, as being an ingredient in the means of arriving at the construction of Lady Hewley's intention, that argument stops very short of that which does or may arise out of the state of the law: for one question which will arise out of the state of the law is this, that is to say, if we are wrong up to this point, if in every point we are wrong and the Appellants right, this point will arise,—According to the state of the law in 1704, when the Charity was founded, it was by Statute-law clearly and positively illegal to create such a Charity, to found such an Institution, if it be as my learned friends say, for the purpose of Unitarian preaching.

Lord BROUGHAM.—Your argument goes to say that it was illegal up to the period of Mr. William Smith's Bill?

Mr. KINDERSLEY.—The 53rd of George III.

Lord BROUGHAM.—That is the period of Mr. William Smith's Bill. The Toleration Act excepted deniers of the Trinity?

Mr. KINDERSLEY.—Yes, my Lord, distinctly.

Lord BROUGHAM.—All that the 53rd of George III. did, was to repeal that exception?

Mr. KINDERSLEY.—Yes, my Lord; it is very curiously framed: it recites one Act, and does not make any provision as to that Act, but removes certain penalties imposed by other Acts.

Lord BROUGHAM.—There was another Bill in the 57th of George III., 1817.

Mr. SOLICITOR-GENERAL.—I do not think that ever passed into a law: there was some proposition for some other Bill, but it never passed the House of Lords.

Lord BROUGHAM.—It is very possible, but it passed the House of Commons.

Mr. ATTORNEY-GENERAL.—I understand that the Bill which was before Parliament in the year 1817, to which the noble and learned Lord has referred, was a Bill to enable the Unitarians to marry in their own chapels.

Lord BROUGHAM.—I believe you are right; it was;—that Bill of Mr. W. Smith's did not pass.

Mr. ATTORNEY-GENERAL.—But the object has been accomplished since.

Lord BROUGHAM.—Yes, you are right; by a general act.

Mr. ATTORNEY-GENERAL.—Applying to all Dissenters.

Mr. KINDERSLEY.—I was proceeding to observe upon the argument arising from the state of the law.—Supposing we are wrong in everything and fail in everything up to this point, that argument may then assume this shape:—At the time when this Charity was founded, it was by Statute Law, I am not speaking of the Common Law, illegal to found such a charity; that is to say, to found a charity for the propagation of Unitarian doctrines. If, then, at the end of 10 or 15 or 20, or any given number of years before the last Act, any information had been filed in Chancery for the purpose of administering the trusts of this Charity, and for the purpose of having a scheme directed with a view to the management of it in a way most according to the intention of the donor, what would have been the course adopted by the Court? Why, the scheme directed, if it directed a scheme, which it might do, would have been a scheme that excluded every person professing Unitarian doctrines, and prohibited everything like Unitarian preaching. No Unitarian could have an exhibition; there could be no exhibition to a Unitarian college. If that continued, as it is admitted it did, up to the Act of 53rd George III., then would come this question—If according to this foundation as it was instituted, and as it was at its institution and for a century or more after its institution, it wsa applicable only by law in one particular way, can you say that because an Act passes in 1813 which makes it lawful from that time, if you please, I mean as far as Statute Law is concerned, makes it lawful to apply the Charity from that time, or the funds of the Charity, to Unitarian purposes, there comes this most important question of law, Does that Act operate so retrospectively that with regard to all pre-existing charities, which had their definite objects according to the existing law at the time of their foundation, you may say that these may be applied in a way which for a century after their foundation was not legal, and to conduct them and manage them as if they had been established after the passing of this new law? I say that this is a most important proposition; but I am satisfied your Lordships will never arrive at it, because there is an abundance to confirm this Decree of the Lord Chancellor and the Vice-Chancellor without ever getting near to this question. But only see how important this is as a general question; and the difficulty was anticipated by my learned friends on the other side, and my learned friend cited Bradshaw *v.* Tasker from the 2nd volume of Milne and Keen, being, as he says, an authority conclusive in his view of the question. Now what was Bradshaw *v.* Tasker in 2nd Milne and Keen, page 221? That case turned upon the Act of the 2nd and 3rd of William IV. cap. 115; that related to Roman Catholics or Papists; and the

question here solely was this, Whether that Act was intended to be retrospective or not? And that is all that the noble and learned Lord who decided that case did decide or profess to decide, that that Act was retrospective.

Lord BROUGHAM.—Whose time was it in?

Mr. KINDERSLEY.—In your Lordship's time.

Lord BROUGHAM.—What year was it in?

Mr. KINDERSLEY.—In 1834. Your Lordship's judgment is contained in six lines, and it was a very short Case; it was a Case that came on without opposition. There may have been some opposition, because the petitioner was opposed in his application; the Court opposed it. I will quote the words to show the way in which the noble and learned Lord arrived at his conclusion. The Act is this: "Whereas by an Act passed in the first year of the reign of king William and queen Mary, intituled 'An Act for exempting His Majesty's Protestant subjects,'" that is, reciting the Toleration Act, "Whereas by an Act passed in the first year of the reign of king William and queen Mary, intituled 'An Act for exempting His Majesty's Protestant subjects dissenting from the Church of England from the penalties of certain laws,' and by certain subsequent statutes, the schools and places for religious worship, education, and charitable purposes of Protestant Dissenters, are exempted from the operation of certain penal and disabling laws to which they were subject previously to the passing of the said recited Act of the first year of the reign of king William and queen Mary, and whereas by certain Acts of the Parliament of Scotland, and particularly by an Act," passed so and so, "various penalties and disabilities were imposed upon persons professing the Roman Catholic religion in Scotland,"—then it goes on with this recital, "And whereas notwithstanding the provisions of various Acts passed for the relief of His Majesty's Roman Catholic subjects from disabling laws, doubts have been entertained whether it be lawful for His Majesty's subjects professing the Roman Catholic religion in Scotland to acquire and hold in real estate the property necessary for religious worship, education, and charitable purposes; and whereas it is expedient to remove all doubts respecting the right of His Majesty's subjects professing the Roman Catholic religion in England and Wales to acquire and hold property necessary for religious worship, education, and charitable purposes, be it therefore enacted, that from and after the passing of this Act His Majesty's subjects professing the Roman Catholic religion, in respect to their schools, places for religious worship, education, and charitable purposes in Great Britain, and the property held therewith, and the persons employed in or about the same, shall in respect thereof be subject to the same laws as the Protestant Dissenters are subject to in England, in respect to their schools and places for religious worship, education, and charitable purposes, and not further or otherwise."

Lord BROUGHAM.—It is an enacting statute, but not declaratory.

Mr. KINDERSLEY.—Yes, my Lord, it is in form enacting.

Lord BROUGHAM.—And in substance.

Mr. KINDERSLEY.—It is to remove all doubts. Now what was the decision of his Lordship upon the subject. His Lordship says, "The Lord Chancellor said he was of opinion that the Act was retrospective, and that as the Trustees of the school were not litigant parties in the suit, which was a mere suit for the administration of the Testator's estate, the estate did not fall within the exception in the third section of the Act. There was an exception in cases where litigation had actually commenced, and one argument was, that the litigation was commenced by petition."

Lord LYNDHURST.—Read the enacting part again.

Mr. KINDERSLEY.—The passage I read before?

Lord LYNDHURST.—Yes.

Mr. KINDERSLEY.—"Be it therefore enacted, that from and after the passing of this Act His Majesty's subjects professing the Roman Catholic religion, in respect to their schools, places for religious worship, education, and

charitable purposes in Great Britain, and the property held therewith, and the persons employed in or about the same, shall in respect thereof be subject to the same laws as the Protestant Dissenters are subject to in England in respect to their schools and places for religious worship, education, and charitable purposes, and not further or otherwise." My Lords, I am not of course bound to contend, it is no part of my case, nor can my learned friend put me in the false position of contending here, that this decision, speaking with all respect to the noble and learned Lord, is right.

Lord BROUGHAM.—I do not understand it. I think there must be an error in the Report; they must have put *retrospective* instead of *prospective*; the preamble is declaratory, but it proceeds not to declare, but to enact: it says, "from and after." Is it a case of previous endowment?

Mr. ATTORNEY-GENERAL.—Your Lordship thought it had in point of law a retrospective operation, there being a previous endowment.

Lord BROUGHAM.—Yes, it must have been a case respecting a previous endowment.

Mr. KINDERSLEY.—Yes, it must have been, or the question would not have arisen; there is no doubt from that time a new endowment might have been made.

Lord BROUGHAM.—It says "in respect thereof."

Mr. KINDERSLEY.—Yes, my Lord: we must bear in mind the question for which this is cited; it is not whether the Act by being retrospective may operate. The legislature may not only pass an Act that may so operate, but they may make applicable to general purposes that which was intended to be applicable to specific purposes. No doubt the legislature may do it, and has done it in this instance; but the question is not, whether any Act is retrospective by the terms and form of it; but the question is, whether that Act being not retrospective in the terms and intention of it, but being to take effect from the present time, whether then, as a proposition of law, you can say that now the old foundation is entirely changed from its purposes and is applicable to purposes which upon its foundation and for a century afterwards it could not be legally applied to?

Now the Lord Chancellor in deciding Bradshaw *v.* Tasker, expressly founds himself, and only founds himself, upon the view of that Act as being retrospective; if his Lordship was right in that view of the Act, he was right in his decision; if his Lordship was wrong in his view of the Act, he was wrong in his decision: but right or wrong it does not touch this Case; and as Mr. Knight Bruce treated that case, I will treat it, having made these observations upon it, by saying it does not bear upon this question, because the question for your Lordship's consideration is not the question that his Lordship meant to decide.

Mr. ATTORNEY-GENERAL.—It came on upon an appeal from the Vice-Chancellor.

Lord BROUGHAM.—It was an Appeal Motion.

Mr. KINDERSLEY.—I will suppose that the decision of the House of Lords has confirmed the whole of it.

Mr. ATTORNEY-GENERAL.—The noble and learned Lord did not differ in the interpretation to be put upon that clause by the Vice-Chancellor; but his Honour thought it came within the proviso in the third section.

Mr. KINDERSLEY.—The Vice-Chancellor's decision upon the proviso went one way, and the Lord Chancellor's decision went, whether right or wrong, upon the construction of the Act as to its being retrospective in its intention and operation.

But, my Lords, I say then that, according to all analogy, simply passing an Act to day to make that lawful which was unlawful yesterday and for all past time or for a century past, never can, according to every principle of law, be held to alter entirely the constitution of that which has been done under the existing law and to operate in this way,—to say, that not only from this time this Act operates, but it operates as if the old Act passed in 1648 had never been passed at all, and as if Lady Hewley's foundation had been created after

the time when the Act of the 53rd George III. passed. To maintain that, is to maintain what is not supported by analogy, and is contrary to all the constructions to be put upon statutes. That is one of the most important questions which, if your Lordships get to it, may have to be decided by your Lordships.

But, my Lords, there is another question which has been slightly touched upon, perhaps of still greater importance, which may arise as to the state of the law;—supposing that the Act of the 53rd George III. operated in any shape or form, retrospectively or otherwise, to remove all statutory law upon the subject of the denial of the Trinity; if we are wrong up to this point, still we come to the question, whether, according to the Common Law, and if there had never been any statute upon the subject at all, whether it would be lawful to found an institution for the purpose of propagating and preaching doctrines subversive of the religion of the state? That is a question of vast importance. Your Lordships will recollect upon the occasion of the 53rd of George III. and other similar acts relating to Papists, and so on, their operation, as Lord Eldon has said more than once, is simply and solely the removal of prohibition or penalty, it is simply the removing of what had previously been imposed; and the removal of that which had been imposed in no respect alters the situation of things before the imposition: and before the imposition, would it have been permitted by the courts of this country, that a person should hold property for the propagation of the doctrine denying the very existence of that God who, according to the religion of the state, was the object of worship? It is not my intention to go into this question, because I am, in the first place, persuaded your Lordships will never arrive at it, and I am sure I should be occupying most unnecessarily your Lordships' time if you did; and another reason is, that I feel myself very little qualified for the discussion of such an important question; it would require very great consideration and lengthened argument to do it justice, and I should best discharge my duty in referring to it in the manner in which I have.

Lord LYNDHURST.—Is not that question agitated in the Attorney-General *v.* Pearson, by Lord Eldon?

Mr. KINDERSLEY.—He refers to it, he does not decide it.

Lord LYNDHURST.—It was agitated in that case; he does not decide it?

Mr. KINDERSLEY.—He refers to it certainly, and those accustomed to his manner may see the bearing of his mind; and if this was to be gone into, the dicta of Lord Eldon would be part of the authorities, and no unimportant part, we should have to cite to your Lordships.

Lord LYNDHURST.—Lord Tenterden and Lord Wynford, when Chief Justice of the Common Pleas, laid it down as their opinion, that the denial of the Trinity is contrary to the Act of Parliament, and subject to legal proceedings. Is not that so?

Mr. ATTORNEY-GENERAL.—I am not aware of it, in the slightest degree, by any tradition, or any printed report.

Lord BROUGHAM.—I have some notion that Lord Tenterden decided it at Guildhall, when Sir Samuel Shepherd was Attorney-General, and prosecuted Hone for publishing parodies; but that was *obiter*, it did not raise the question, and there was ribaldry there; it was not an argument and sober denial, but a ribaldrous denial; but I think he lays down that doctrine.

Mr. ATTORNEY-GENERAL.—I am not aware that it was ever laid down by any judge, living or dead.

Lord LYNDHURST.—That Act merely repeals the penalties, and left the law as it was before.

Lord BROUGHAM.—He viewed the clause in the Act as taking away the penalties and leaving the Common Law as it stood before. He said it was ribaldry.

Mr. ATTORNEY-GENERAL.—The Statute repeals the former Statute, and leaves the Common Law where it stood.

Lord BROUGHAM.—The question was not raised, it was merely *obiter*.

Mr. ATTORNEY-GENERAL.—I think Lord Tenterden must have known that heresy is not a crime known to the law of England. While the writ *de comburendo hæretico* was in force, an Unitarian might be burnt.

Lord BROUGHAM.—According to my notion, Lord Tenterden laid down that the Act of the 53rd George III. only repealed the penalties, and left the offence at Common Law. I think he went a step further; and that is the notion on the Bench.

Mr. ATTORNEY-GENERAL.—I am not aware that on the prosecution of Hone and Carlile it was laid down by the learned judges; though Christianity is part and parcel of the law of the land, and to revile it is an offence at Common Law. Any person may decently controvert any doctrine of the Church, and though it may be heretical, it is not a misdemeanour; it is not a misdemeanour of which the civil magistrate can take cognizance.

Lord BROUGHAM.—I think that is the sounder opinion, if you ask me my opinion; if not, half the books that are sold are liable to be proceeded against.

Mr. ATTORNEY-GENERAL.—Yes, my Lord; and more than that, every Unitarian assembly might be indicted, and the Arians the same, because they deny the Divinity of our Saviour as well as the Unitarian.

Lord LYNDHURST.—I think we shall find the case. You had better suspend the discussion till we have looked.

Mr. ATTORNEY-GENERAL.—I am not aware of it.

Mr. KINDERSLEY.—I am sure your Lordships will allow me to draw your attention to a distinction of very great importance upon this part of the argument on the other side,—that according to law a man cannot be indicted for maintaining propositions contrary to the Trinity, that it is not a subject of a criminal proceeding, that heresy is not an offence cognizable to the law of England; but let me draw your Lordships' attention to this distinction: it is widely different, whether a man may be indicted for holding opinions which are heretical and Antitrinitarian, and the question, whether a Court of Equity, for such your Lordships are, will say that a trust delivered for such purposes, can, according to public policy and without regard to its being an indictable offence or not, but according to the public policy of the law as it stands, upholding the Church as a part of the State, will allow property to be so applied? Therefore, it is quite beside the question, if it was found that any judge had laid down the proposition, that it was not an offence at Common Law: whatever it may be laid down or decided upon, that proposition does not involve in it the consequence that it would not be against the principles of a Court of Equity, to allow the trust to be carried into effect; and sure I am I am not going beyond what Lord Eldon asserted clearly and distinctly was his opinion, That a Court of Equity would not allow the trust to be so applied.

My Lords, the Case I believe I have now brought thus far: I conceive it really resolves itself into a question not only of the simplest form, but a question upon which a conclusion may be arrived at in the simplest and most legitimate way: the question simply is, What is the intention? Secondly, how are you to arrive at the intention? Supposing I were to wave all the evidence which is objected to us, evidence going specifically to the individual opinions of Lady Hewley; I submit to your Lordships that there is clear evidence to show that the body to which Lady Hewley belonged, (and that has been treated by the other side as legitimate evidence,) that that body considered that a trust for the benefit of 'Godly Preachers of Christ's Holy Gospel' would not include persons who preached Unitarian doctrines.

My Lords, I was curious to know what sort of preaching might be supposed was the preaching which, when Lady Hewley or a person in her situation spoke of preaching, she had in view. Now, of course, the only means of arriving at any knowledge upon the subject is by looking at the sermons of the Nonconformists of her day, which were actually preached to congregations,

and either at that time or subsequently published. I have laid my hand upon one or two, and I would refer your Lordships, with your Lordships' permission, to a well-known volume of sermons by one of the most leading of the Nonconformist divines, whose name has been so often in the mouths of the counsel at the bar, I mean Calamy. There is a series of sermons published, as preached by Calamy, at Salters' Hall, in the year 1719. My Lords, I was was about to refer to a volume of Calamy's sermons which were sermons actually preached by Dr. Calamy, and I need not remind you how important the name of Calamy is, so connected with this discussion; it was published about this period, and the epistle dedicatory is to George the First. Now the titles of these sermons will show your Lordships in one instant—I do not mean to say you can induce an argument from one single instance,—but the titles will show the doctrines preached. The first is, "The Deity of the Father asserted and illustrated from the 1st of Corinthians, viii. 6." Sermon the second, "The Deity of the Son proved and confirmed from the first epistle of John, v. 20." Sermon the third, "Objections against the Supreme Deity of the Son, considered and answered from John the 5th, and 23rd verse: 'That all men should honour the Son even as they honour the Father.'" Sermon the fourth, "The reply to the objections against the Supreme Deity of the Son, continued from Colossians, ii. 2. 'To the acknowledgement of the mystery of God, and of the Father, and of Christ.'" The fifth is, "A further continuation of the reply to the objections against the Supreme Deity of the Son," and the text is, 'That all men should honour the Son even as they honour the Father.' The sixth sermon is, "The Deity of the Holy Ghost proved and confirmed from Mathew xxviii. 19: 'Baptizing them in the name of the Father, and of the Son, and of the Holy Ghost.'" The next sermon, the seventh, is, "Objections against the Deity of the Holy Ghost considered and answered from 1 Corinthians, ii. 11." The eighth sermon is, "Of the Unity of the Godhead, 1 Corinthians, 8th chapter and 4th verse: 'We know there is none other God but one.'" The ninth sermon, "Of the distinctions in the Godhead," from 1st Corinthians, xii. 4th, 5th and 6th verses. Sermon the tenth, "The Old Scheme and New compared as to antiquity," from Jeremiah 6th, 16 verse. Sermon eleventh, "The Old Scheme preferable to the New, on many accounts," Jeremiah 6th, 16th verse. Sermon twelfth, "Curiosity to be avoided," from John 3rd, and 9th verse: 'Nicodemus answered and said, how can these things be?' Sermon thirteenth, "Truth and Love to be maintained jointly," from Ephesians 4th, and 15th verse: 'Speaking the truth in love.' Then there are three sermons in defence of that disputed text in John, "Of the three heavenly Witnesses." That is the whole volume of the sermons. Those were preached and published a few years after the foundation of the Charity of Lady Hewley; I think that they were preached in 1719 and 1720.

Now, my Lords, take Howe's Works; he was rather before the time of Lady Hewley, he flourished before the date of Lady Hewley's Deeds, which were executed at the latter period of her very long life, but he was a contemporary of Lady Hewley, and his works have been the subject of comment. Now, here is a collection of sermons actually preached by Mr. Howe, and preached before the time of Lady Hewley's foundation-deeds, in which the same sort of subjects are treated; they are extremely numerous sermons and lectures, all of them preached or delivered, and among others there is a lecture the subject of which is, "The HolyTrinity in external operations is not divided." Then there is one that precedes that, as would naturally be the case, "The Unity of the Godhead." The next are "The Trinity of persons in the Divine essence," "The attributes and perfections of the Divine Being," and so on. Doctrinal subjects of that sort are the subjects, I will not say the subjects of every one, but of nineteen out of twenty of this great mass of sermons and lectures I have here. Then, again, we have a collection of Baxter's Sermons, published by his friend Mr. Sylvester;—I have made a mistake in supposing

they were Baxter's, they were the sermons of Mr. Sylvester, whose name has occurred in the course of the discussion, who was an intimate friend of Baxter's and was repeatedly mentioned by him and other writers of that date; and his sermons are, in fact, sermons upon doctrinal points, almost throughout; and among other instances let me refer you to this, which is a sermon upon the 12th of Hebrews and the 24th verse: under the head of the third query, he says, "How is Jesus Christ the Mediator of the New Covenant? I need not tell you who this Jesus is, that he is the Eternal Son of God, the second person in the Sacred Trinity, God manifest in the flesh; that he was born of a Virgin by the extraordinary overshadowing of the blessed Spirit; that he is of the Royal Seed and the inheritor of David's throne for ever," and so on. I might go through and show the same observations apply to the others. In short, wherever you have the means of ascertaining what the preaching of Christ's Holy Gospel means, you find it is not the dry preaching of moral doctrines, not the dry enunciation of the words of Scripture, and casting them among the multitude, and saying, make your own meaning out of it; but it was the strenuous, sturdy maintenance of preaching the doctrine, and that throughout, the clear doctrine of the Trinity, with all its accompaniments of Original Sin, the Atonement, and so on.

Now, my Lords, if this be so, if we are at all right in the argument we have addressed to your Lordships, we come then simply to this question, What has been done with this Charity? And, my Lords, the first thing that strikes one is this, that there being a college which was originally founded at Manchester, but afterwards removed to York, and still called the Manchester College at York, which is a college expressly for the purpose, although it is not admitted by Mr. Wellbeloved, of inculcating or bringing up persons in the maintenance of the Unitarian doctrines, and for half a century past, I will say, there being five exhibitions authorized by Lady Hewley's Deed, every one of those five exhibitions has been sent to Manchester College by these Trustees, until the Report of the Commissioners of Charities came out, when, no doubt in consequence of the suggestions of the Commissioners in that Report, they for the first time, though it had been refused before, sent one of those exhibitions to, I think, the Rotherham College, which is not Unitarian, still keeping four at the Unitarian College, and also, doing this, they had before given to each of the five exhibitions 20*l.*, making 100*l.* in the whole. They now send one exhibition to Rotherham College, giving that individual 20*l.*, and they have advanced each of the four retained at Manchester College to 25*l.* still making 100*l.* I am not speaking of this for the amount, 5*l.* more or less, but that having gone on for half a century and upwards, and it being proved in the evidence which has been read, or you will find it in detail in the Respondents' Appendix, particularly the evidence of a gentleman who was brought up to be a Unitarian minister, and who became a Unitarian minister under the teaching of that College, and afterwards upon his own conviction found his error and became a Trinitarian; I say, from all that evidence, it is clear that this is a Unitarian College, and so the Trustees have acted with regard to the application of these funds. Is this according to the principle—is it contended for as being the true and just principle—of the Presbyterians of Lady Hewley's day and afterwards? is this a fair distribution of the benefits which Lady Hewley intended, even if she intended to include Unitarians?

Mr. ATTORNEY-GENERAL.—We have obtained the Bill your Lordships were inquiring after; it is fair my learned friend should be informed of it; this is the bill introduced in 1825, that of 1817 we have not got.

Lord BROUGHAM.—It is immaterial.

Mr. ATTORNEY-GENERAL.—The Bill of 1825 is thus intituled: "A Bill to grant relief to certain persons dissenting from the Church of England in relation to the solemnization of Marriages;" then this is the Preamble,—"Whereas many," &c. (*reading the Preamble of the Act.*)

Mr. KINDERSLEY.—I do not know why this is read, any more than any paper out of my pocket which I may have composed myself.

Lord BROUGHAM.—Was it passed?

Mr. ATTORNEY-GENERAL.—It passed the House of Commons.

Mr. KINDERSLEY.—We are not reading an act, but reading what has no force and operation in the law of the country.

Mr. ATTORNEY-GENERAL.—Instead of reserving it to my reply, I thought it right to apprise you of it.

Mr. KINDERSLEY.—You may observe upon it now and afterwards too.

Lord BROUGHAM.—It is very fair.

Lord LYNDHURST.—What year is it?

Lord BROUGHAM.—One in 1825, and another in 1817.

Lord LYNDHURST.—Neither of which passed?

Mr. ATTORNEY-GENERAL.—Neither passed this House.

Lord LYNDHURST.—Neither of which passed?

Mr. ATTORNEY-GENERAL.—No, my Lord.

Mr. KINDERSLEY.—An Act of the Chamber of Deputies might as well be read.

Mr. ATTORNEY-GENERAL.—But it was no objection to its passing, that this was considered an offence at law. I believe, on the contrary, that most venerable prelate at the head of the Church of England, who claims the veneration and respect of all mankind—

Lord BROUGHAM.—George the Fourth do you mean? Because you said "the head of the Church of England"; that is not Presbyterian.

Mr. ATTORNEY-GENERAL.—The ecclesiastical head, the person of the highest dignity in the Church, I believe, expressed an opinion by no means unfavourable to the Bill.

Lord LYNDHURST.—You cannot make much of a bill that did not pass into a law.

Lord BROUGHAM.—It shows the respect with which the House of Commons treated it.

Lord LYNDHURST.—They do not make laws upon everything.

Mr. KINDERSLEY.—I do not know whether it is to be submitted to my Lords the Judges, I do not know whether a bill that did not pass is to be treated as an act in the consideration of this Case. It seems to me that an act of the parliament of France might just as well be brought to bear upon the construction of the present law.

Now, my Lords, let us see another point of view. I am dealing with this part of the subject very shortly: the details of it are in the evidence before your Lordships, and I should only waste your Lordships' time by reading it; it is at all events contained in the Respondents' Appendix; I mean that which relates to the Unitarian Association. Now what is the Unitarian Association? Does it profess to be by its title and acts an association for the purpose of promulgating the Scriptures and maintaining the great Presbyterian principle, as it is called, leaving mankind to divine how it is enforced, and draw their own construction from the unexplained words of Scripture? No, but attacking what is said to be the Presbyterian principle, and maintaining one particular view of it, by writings, by distributing tracts, by publishing works, and among the rest a version of the Testament itself,—all with the object of maintaining one view, and that peculiar view differing, as I say, from all other Christian churches,—maintaining those views which are maintained and supported by most of the present Trustees.

Now, my Lords, let us see what has been done by that Unitarian Association. Mr. Wellbeloved, being a very active member of it, as appears by their own report, Mr. Kenrick being also a member of it, and forming the apparent head, they, in one of their reports, say that they will undertake that which had been at that time left unfinished, the printing of what is called a New and Improved Version of the New Testament,—that that shall be part of the application of the funds of that institution. Accordingly, my Lords, that is put forth, not only with the assent, but through the active intervention and exertion of Mr. Wellbeloved; the application of Mr. Wellbeloved's money and

Kenrick's money, and the money of other persons, subscribing to do it. ' put forward a list of the works in another report which they have pub- d; every one of those is distinctly Unitarian, and intended to propagate arian doctrines, and the Unitarian Creed is one of these. The Unitarian d! The creed of persons who say that they are a creedless sect, and who n anti-creed sect, being Presbyterians, as they call themselves! One of vorks they put forward is the Unitarian Creed, *proh pudor!* the works of Aspland, Dr. Southwood Smith, and others; and at the head of the list ls the New and Improved Version, the cheap edition, omitting the various ings; and the Improved Version professes to be taken from the translation rchbishop Newcome. If your Lordships look through the larger work, will find that Archbishop Newcome's text is followed in this way,—wher- that text, in any case relating to the Trinity, Original Sin, and so on, s with their received notions upon these subjects, then Newcome's trans- n is adopted. When I say, wherever it occurs, I cannot say that it occurs ery one of the five or six hundred pages of this book; but I believe it rs in four hundred and fifty, at least, that there are texts in which other lations are substituted for those which Newcome had given, though it sses to be founded upon his text. You will not understand us in the ence we are making to this improved version, as meaning to say that this oved version is made use of in their chapels; the version is such that could not get to it, and they do not get to it; but we use it as being a t put forth by those persons for the purpose of disseminating Unitarian rines: and let me draw your Lordships' attention to one or two passages ow in what way it is framed. It has been mentioned that the beginning e Gospels of Saint Matthew and Luke are printed in italics, that being idered spurious, and that there is good reason to suppose it is spurious; strange enough, which I was not aware of till yesterday, in looking it over , I found that a considerable portion of the second epistle of Saint Peter inted in italics, to indicate its spurious character, and that it has no dation whatever beyond the imagination of the individual who published the whole of the second chapter of the second epistle of Saint Peter is ed in italics as being spurious. One would suppose that persons who tained and professed to maintain nothing but the language of Scripture, ld at least in their translation give the translation of Scripture; that ey found a Greek word that had a clear and definite meaning, one would ose that they would give that meaning, leaving persons to draw their inference from it, and understand it as they might. St. John in the ning of his gospel, as we know, uses several terms as applicable to Christ: only begotten Son of God," which we conceive everybody understand- he language must feel to be the only just translation of μονογενὴς Θεοῦ. Lords, the eternal generation is not of course a doctrine of the Unitarians, therefore the term μονογενὴς was not acceptable to Unitarian ears, and efore it has been thought expedient by those who profess to give you pture precisely and nothing but the Scripture, to leave out the word otten," and to say, "the only Son." Take another instance: we are in a passage that the Jews were desirous of putting our Saviour to death, use he made himself "equal to God," which word "equal," one would was the just and the only just translation of the word ἴσος; but the equality e Son with the Father, of course, is not one of the doctrines of the Uni- ns, and therefore the word "equal" is changed into the word "like;" not only in that passage, but also in a passage in one of the Epistles, re the same word ἴσος is used, that is translated "like." I might go on multiply instances of this sort of translation, and show your Lordships, only with regard to this species of freedom used in translation, and also n Unitarian purpose, not only has this freedom of translation been used, there are notes appended to this improved version; and the notes are a important part of the publication; and these notes, wherever there is a

passage which cannot be mistranslated, that is, cannot be very easily mistranslated, without doing rather too gross a violence, there is carefully put in a note to give an explanation according to the Unitarian sense and not according to the Trinitarian sense. I should only weary your Lordships by carrying you through, and to prove my proposition I must carry you through, a great many of these instances; but I hope your Lordships will on some occasion of leisure look at this book for the purpose of justifying the assertion I now make, —that both in the mode of translation and in the notes, it is throughout a straining of everything for the purpose for the purpose of establishing Unitarian opinions.

Mr. Romilly suggests to me an instance of the same sort of translation in a passage in the Acts, containing a statement of the circumstance of Ananias and Sapphira. The passage is, "But Peter said, Ananias, why hath Satan filled thy heart to lie unto the Holy Ghost?" that is the translation in our version; and then immediately afterwards occurs, "Thou hast not lied unto men but unto God." The same Greek word is used, but the expression "lying to the Holy Ghost" might be thought to imply a recognition of the personality of the Holy Ghost, which is not one of the Unitarian doctrines; and though the word is still translated "lied" in the latter part, it is changed to "deceive" in the former part. I have got marks in my copy of this book at a score of passages, but I think I ought not to occupy your Lordships' time by proving that which I would challenge, if I might use that word in its proper sense, any investigation to justify.

Then, my Lords, if we are right in saying there has been an application of these funds to certain purposes that are Unitarian, and we are right in saying that such purposes are inconsistent with Lady Hewley's intention, what has the Vice-Chancellor's decree said, as affirmed by the Lord Chancellor? It has simply said, that the Charity ought not to be applied to those purposes. I will refer your Lordships to the precise words, for fear I should mis-state them:— "This Court doth declare that ministers or preachers of what is commonly called the Unitarian belief and doctrine, and their widows and members of their congregations, and that persons of what is commonly called Unitarian belief and doctrine, are not fit objects of and are not entitled to partake of the Charities of Dame Sarah Hewley in the pleadings of this cause mentioned." That is the whole of the declaration. The rest consists of the removal of the Trustees. Now is that a right and just declaration? It is said, what do you mean by "what is commonly called Unitarian belief and doctrine"? I will only ask Mr. Wellbeloved himself, not Mr. Wellbeloved after the Information is filed and he is put to answer, but Mr. Wellbeloved as he acts and speaks in his own pulpit, or as he acted and spoke before the Information was filed. I will take Mr. Wellbeloved's sermons, I will take Mr. Kenrick's sermons, I will take the Proceedings and the Report of the Manchester College, and I will show your Lordships, if necessary, from those, that they speak in every passage and almost every sentence of "Unitarian belief and doctrine," "we Unitarians," "the doctrines of us Unitarians," as that about which there is no manner of doubt in their own minds or in the minds of those who hear them speak. But now that this Information is filed, now that the question is, whether it is consistent with Lady Hewley's intention that there should be this provision for Unitarian preachers; 'now, though we never call ourselves Presbyterians in our pulpits, though we never call ourselves Presbyterians in our publications, though we never speak of ourselves as Presbyterians, or use the word, except as a *cheval-de-battaille*, now we will say, we do not know what you mean by "Unitarian belief and doctrine," we know nothing about it, the law can know nothing about it, and the Vice-Chancellor could have no specific meaning in using the term, or if he had, those who read it can have no specific understanding of it.' It is trifling with the Court to say there is nothing definite in this view of the subject. Then it is said, "You ought to have gone on further and to have specified what are the objects; you should

scheme or a sort of prospectus of the class of persons intended to be ted;" my Lords, I ask why? for what reason? upon what analogy? e you interpose in charities, do you always do that *ex necessitate*, whether ourt requires it or not? When the question arises whether a particular ation is right or wrong, and the Court comes to the conclusion that it is , do you also go on, when it is not wanted, in your decree, to specify all tails of the way in which it shall be applied? Take the common case, ing every year and every month, in which trustees are called to account eaches of trust, in granting improper leases of the trust property; they ses of the most ordinary description, parties making complaints that an improper application of the trust property, and that it is a breach of the Court declares it is; and if the Information asks it, and it is necessary her purposes, or even though the Attorney-General does not ask it, as arned friend says, though there is no foundation for it, the Court may t to the Master, to approve of a proper scheme for the management of f it is only to ascertain the original object of the charity, or how a parti- part of the property has been applied, and whether such application is ling to the trust, if that be all that is to be done, I appeal to one of Lordships, most familiar with proceedings in Equity, whether the Court or does not content themselves with pronouncing its decree upon the t of complaint, upon which alone the Court is called upon, either by rties complaining or by the defendants in the case, to pronounce?

learned friend has referred to cases, and I wonder he has done so, of ations in respect to charities, and he says you are not so tied down a are when an individual is complaining, but you may get larger relief you have prayed for in the information. What has that to do with it? had only asked for a declaration upon a particular point by the informa- out found it was necessary at the bar to ask for more, or what our bill ot asked for, then the cases my learned friend cites would be applicable w that the Court does not tie charities down with the same strict rule does individuals. That is the only effect of the cases that my learned cited; they have no bearing upon the question before your Lordships, er the decree is wrong, because it does go on to decide that about which is no dispute and no controversy, and which the nature of the case does quire the court to pronounce. I submit upon this, which is the main f the whole, the Decree is right.

Lords, I will not trouble you with more than a word or two upon the part that remains, I mean the removal of the Trustees. The greater n of them are confessedly, or are proved to be, Unitarians, zealously ting Unitarian purposes, and seeking to disseminate Unitarian doctrines, exclusion or beating down of Trinitarian doctrines. Now, my Lords, regard to three of them, they are not either admitted or proved to be rians, but one of them, Mr. Wood, was not constituted a Trustee, I e, till after the proceedings commenced; it was *pendente lite*. With l to the others, the two Mr. Heywoods, father and son,—the father is lead;—the father is found among the subscribers to, and supporters of, cting as president, or whatever is the title of the ostensible head or l personage of Manchester College; and therefore, though it may be true John Pemberton Heywood was not avowedly a Unitarian, nor is to be lered as professing the same doctrines and the same opinions with his or Oliver Heywood, a contemporary of Lady Hewley, I am sure Oliver ood, at least, whether rightly or wrongly, would have been exceedingly to find a descendant of his supporting the propagation of Unitarian ns. But supposing every one of the Trustees stood in the situation of essrs. Heywood, and were not proved or admitted to be Unitarians, still find that they have such a strong tendency to devote this Charity to rian purposes, which in the present argument I am assuming to be an per application, if you find that they have that tendency, not only as a

matter of inclination, but as a matter in which their hearts and souls are involved,—for any reason whatever, if you find that their application has been in accordance with that, not accidentally but systematically, not incidentally but during the whole course of their Trusteeship, it is not too much to say that the Court will not allow any trust connected with the propagation of religion to be in the hands of persons who have so strong a tendency, I may say interest,—I do not mean pecuniary interest,—to devote it to those persons to whom they have systematically devoted it; and the Court will say, It is better it should go into the hands of those who have not this bias, and therefore you ought to be removed. Now, my Lords, the removal was unaccompanied by any of those circumstances which attend the removal of trustees who from corrupt motives have been guilty of misapplication; not only was there no bygone account, but all the costs and charges incurred up to the date of the Decree, were given to these gentlemen. Therefore I conceive that the Vice-Chancellor was as right in that portion of his decree as he was in that portion upon which the Appeal is founded; and I summit no reason has been shown for the disturbance of this decree. My Lords, if it be the case, as the Attorney-General has said it is, that it is a new decision upon this question, and is determining or will determine the decisions in a great number of other charities similarly situated; if it be the case, that in a multitude of charities created by Nonconformists or Presbyterians with the intention of having them devoted to the propagation of Trinitarian worship or doctrines, and those have been applied suddenly or imperceptibly and gradually to persons of a totally different way of thinking; if, I say, that be the case, and this is a general question, and your Lordships' decision will affect not only this but those cases, so far from thinking that the inference drawn by my learned friend should have any operation in deterring your Lordships from affirming this decree, it will be a reason why your Lordships, as far as you can look at or make use of any such motive or feeling, it would be a double reason why your Lordships should affirm and be glad to affirm this decree. You would be glad, if you felt that this decision was not merely to restore to those for whom it was intended, this 3000*l.* or 4000*l.* a year, or whatever is the amount of it, but would have the effect of taking from those who have usurped funds in a multitude of instances which were intended by those who created those funds for persons of Trinitarian sentiments. I feel that an observation of that kind cannot legitimately bias your Lordships' minds, and I should not have adverted to it at all, but that my learned friend the Attorney-General, in his opening, thought fit to make it a part of his observations and press it upon you; and the single observation I have offered deserves as much, in my judgment more, weight than that to which it is an answer.

REPLY.

Mr. ATTORNEY-GENERAL.—My Lords, it now becomes my duty to reply to the very elaborate and able arguments brought forward by my learned friends on the other side of the bar.

My Lords, I am sure they have done great justice to the cause they had to support, and I cannot help expressing the sense that I feel of the very temperate, mild, and Christian spirit which pervaded the arguments of my learned friend Mr. Kindersley. With the exception perhaps of a few of his concluding observations, which I can easily pardon, I have nothing in the slightest degree to complain of in the observations he made.

My Lords, I cannot pay the same compliment to my learned friend Mr. Knight Bruce; but he was very careful to tell us he was not expressing his own sentiments, but the sentiments of those whom he represented. It therefore becomes very material to know whom he does represent. He stated, my Lords, rather pertinaciously, at your Lordships' bar, that he represented the

ey-General; my Lords, the Attorney-General does not at all appear at Lordships' bar.

d BROUGHAM.—In his public capacity, you mean.

. ATTORNEY-GENERAL.—Sir John Campbell has the honour of ap- g at your Lordships' bar on behalf of the Appellants, and the two parties bar are the Relators and the Trustees of Lady Hewley's Charity, the l Trustees and the Sub-Trustees for the management of the Almshouse.

d BROUGHAM.—The Relators have the *fiat* of the Attorney-General.

. ATTORNEY-GENERAL.—No, my Lord, they make use of the name Attorney-General, as a prosecutor makes use of the name of the Queen; might just as well be said that the Attorney-General is answerable for every ous and groundless prosecution instituted in England, because he has by of his office the power of entering a *nolle prosequi*, as that it shall be hat the Attorney-General is answerable for every charitable information because he has the power of stopping it in its progress, if any abuse is ht before him in any case where his name is improperly employed. My , this is not a public suit; the Attorney-General of the day, Sir James ett, most positively refused to interfere; he thought, as it might be ex- d from him, that it was better not to move what was quiet, and to allow to proceed as they had done without complaint for the space of seventy Sir Thomas Denman was Attorney-General when this Information was but there was no application to the Crown to proceed specially; in this the Relators proceed in the name of the Attorney-General. Who are the ors? They are five gentlemen, of the lay persuasion, belonging to a tian sect which Lady Hewley viewed with Christian charity, and would been willing to assist, as she would have been willing to assist every de- ation of Protestant Dissenters that the law tolerated; but the Independ- re a sect which, in the early part and in the middle part of the seven- n century, the Presbyterians looked upon with abhorrence. The Inde- nt system was with them the abhorred thing, and they would as soon communicated with Papists as with Independents. What would have the opinion of those divines who met at Westminster in 1643, of the endents, who say there is no church, that every congregation is a church elf, who deny any hierarchy or any subordination to church government urch discipline? Why, my Lords, the Presbyterians dislike Popery, they e Prelacy, and they dislike the Independent system as much as Popery or ry; and if indeed it shall turn out, that none are entitled to participate s Charity except those who maintain the same opinions with Lady ey, it is quite clear that the Independents can have no portion in her y; and it must come to that if that indeed were to be the construction your Lordships, with the assistance of my Lords the Judges, should put the Deed, and it were to turn out that in the present day there is no and no individual perhaps entertaining the opinions exactly of Lady ey; the result would be what was pointed out by a noble and learned when sitting as a judge in this case, that the Relators had better be upon guard, and not grasp at too much, for the result may be that they are ed to nothing, that the objects of this Charity are exhausted, that there either be an entirely new scheme, or that the property would belong to rown.

Lords, the Independents are not of the religion of Lady Hewley, it is ted they are not, and it is strange indeed to find them coming forward as ors, and saying that the Defendants ought to be removed as Trustees se they are not of the same opinions with Lady Hewley.

Lords, I own it seems to me that these Relators not only would have a more Christian charity, but would have shown more prudence and tion, if they had been content with the very, very large proportion they hitherto enjoyed of Lady Hewley's bounty, because, by grasping at the , the whole may be lost to them.

Now, my Lords, let us just see what the Decree is that is brought into review before your Lordships; and, my Lords, speaking with very great deference upon some of the points that arise upon it, I certainly must in discharge of my duty express an opinion with very great confidence, that the Decree in its present shape cannot by possibility stand. There are parts of it upon which, my Lords, my learned friends have not ventured to make an observation in answer to the objections that we made. It divides itself into two branches, the removal of the Trustees and the regulation of the Charity with regard to the recipients. Has my learned friend Mr. Knight Bruce, has my learned friend Mr. Kindersley, said one word to show that a clergyman of the Church of England may not be one of the Sub-Trustees for the management of the Almshouses? But Mr. Palmes is removed on the ground that he is a member of the Church of England, there being nothing imputed to him, as there could not be, of any abuse of the funds of the Charity, because over those funds he has no controul. He is only a Sub-Trustee, and the Sub-Trustees are only allowed to name the old women who are to be introduced into the Almshouse, and join in removing them. Those old women must be Protestants, and must be able to repeat the Lord's Prayer, the Creed, the Ten Commandments, and Edward Bowles's Catechism; but here is nothing to say that they may not be of the Church of England; they are required to go to a place of Protestant worship—it may either belong to the Establishment or be a Dissenting Meeting-house. My learned friends have not ventured to make one single observation in defence of that part of the Decree by which Mr. Palmes is removed.

Have they ventured to make an observation in favour of that part of the Decree by which, with reference to the eleemosynary branch of this Charity, if the Decree stands, no person can participate in that bounty of Lady Hewley as an object of destitution, if that person should entertain what are commonly called Unitarian opinions?

My Lords, when I first had the honour to address your Lordships, I was at great pains to point out to your Lordships the variety of objects that the Foundress had in view, one being preaching and one eleemosynary relief. My learned friends have directed your Lordships' notice to a great many arguments, well deserving of great attention at your Lordships' hands, with regard to that branch of the Charity which refers to preaching and the propagation of a particular faith, but not a word have they said respecting the objects of eleemosynary relief; they feel it too difficult to grapple with; they cannot pretend to say that it was the intention of Lady Hewley that no person should be considered a godly person without examining into the peculiar dogmas that that person might entertain. I venture, therefore, with very great respect, but with considerable confidence, to say that the Decree in its present state cannot stand.

But it is my duty to examine more particularly now with regard to the Trustees. I will first begin with the removal of the Trustees. At page 32 of our Case, your Lordship will find the substance of the Decree very accurately abstracted; and according to this there was an order "to remove all the Defendants from being Trustees and Sub-Trustees or Managers respectively of the Charity, and to refer it to the Master of the Court in rotation to appoint proper persons to be Trustees and Sub-Trustees or Managers thereof respectively in the room of the Defendants." Then there are removed the Grand Trustees and the Sub-Trustees; those who were Unitarians, those who were allowed not to be Unitarians, and one who was a member of the Church of England. Now I apprehend, in order to remove Trustees, there is a burden thrown upon those who are to support the Decree to show that there is sufficient ground for the removal, and for the removal of all those who are to be removed. My learned friend Mr. Knight Bruce took an entirely new ground upon this part of the Case, and he reasons thus: the appointment of all the Trustees was void *ab initio*, because there was here a majority of the Trustees who had become Uni-

tarian, and having become Unitarian they had no right to act, their acts were null and void, and therefore all who had been appointed, whether Grand Trustees or Sub-Trustees, are bad Trustees from the beginning, and the appointment was vicious, and that which was void from the beginning will acquire no validity from lapse of time. My learned friend must have been driven, I think, to great extremity before he could resort to such an argument; for, in the first place, there is not a hint in the Information that the original appointment of the Trustees was illegal or void. It is a new ground entirely taken up at your Lordships' bar. My Lords, such a ground could not have been relied upon in the Information; there is no proof what were the religious tenets of those by whom the Trustees were appointed. If the appointment of the Trustees by Unitarians would be *ipso facto* void, there is not a tittle of evidence to show what were the religious tenets of those by whom the Trustees were appointed. Mr. Palmes was appointed in 1807; what evidence is there before your Lordships to show that in 1807 there was a majority of the Trustees who were Unitarians? not one iota of evidence; it is a *gratis dictum* to say that they were. But suppose they had been Unitarians; let me suppose that being Unitarians they are liable to be removed; is there any ground for saying that until they are removed they are not Trustees, that they are not vested with all the functions of Trustees? Why are they to be removed? They are to be removed and new Trustees appointed in their place upon the hypothesis that they are still Trustees, and they will remain Trustees till they are actually removed. It is not a declaration that they were never Trustees, but what is asked is, that being Trustees they may be removed. Well then, my Lords, is there any reason for saying that while they do continue Trustees, that they have not all the powers that belong to that office? Is not the legal estate in them? Have they not the authority that Lady Hewley's Will and Regulations confer upon them? Then, my Lords, that new ground utterly failing, why are the Trustees to be all removed? Says the Vice-Chancellor, I think, on the ground of belief they ought to be removed; and that, my Lords, is likewise the ground which was pointed out by Mr. Baron Alderson, because that very learned Judge intimated, when he expressed his opinion, that whether the Trustees were to be removed "will depend of course upon the point whether your Lordship (Lord Lyndhurst) is satisfied that these Trustees do in fact profess opinions differing from those to the promotion of which Lady Hewley devoted her foundation, and whether in that case it is the duty of a court of equity to remove them from a trust which they cannot so properly discharge as persons whose opinions concur with those of the Foundress." Is any discrepancy of belief a sufficient ground for removing the Trustees *per se*? If there be any misconduct, that misconduct shall be examined by and by; but now I am simply upon this ground: I will suppose that it is proved, and that it was legitimate to prove, which I shall be able to show it is not,—suppose that it was legitimate to inquire into the private opinion of Lady Hewley, and that it is established she was a strict Unitarian, the question arises, is that a sufficient ground under these Deeds to remove Trustees who are Trinitarians? My learned friends, with all their labour, all their learning, all their research, have not brought forward any case or dictum or scrap of authority to show that it is a doctrine of the Court of Equity, that where there is a charity the trustee must be of the same religious opinion with the founder.

Lord BROUGHAM.—I apprehend the argument used on the other side did not go the length of saying that the persons benefited by the Charity must be of the same religious opinion as the Founder, but only that while there is a certain description of persons called by the Founder, and which she had a right to call, by a particular name, if neither the law,——* and there is a doubt who they are, you pray in aid what the probable objects of her bounty were, to find out the just construction of her intention in the foundation. I do not apprehend

* There is an omission here which the Editor does not presume to supply.

that it was ever argued that when any person devotes funds to a charity you are to confine the objects of the bounty of the Foundress to persons agreeing with her in religious opinions.

Mr. ATTORNEY-GENERAL.—Unless my learned friends can go so far, and can persuade your Lordships that the Trustees are justly removed merely on the ground of discrepancy of religious belief: if they can show your Lordships that where there is a charity of this sort the law will not permit the appointment of a trustee of a different religious persuasion from the founder, or from the objects of the bounty of the founder, then, my Lords, it would be a sufficient ground; but unless they go so far, their belief will be of no avail in their removal.

Now, my Lords, I apprehend it was competent to Lady Hewley, according to her discretion, to appoint such Trustees as she thought fit, and make such provision as she thought expedient for the continuation of the Trustees, and that in this respect her Will is to be obeyed, and that it is not for any Court to add conditions which she thought unnecessary.

Now what does she say with respect to the appointment of Trustees? She appoints a certain number; those I think were all Presbyterians; and it is a curious thing that they were all Presbyterians; and yet the Relators are Independents, and they wish to be appointed Trustees of Lady Hewley. Then, with regard to the succession of the Trustees, she declared that "if any one of the Trustees should die, the survivors should elect in his room such a person as in their judgments and consciences they shall think fit." She refers it to the discretion and the consciences of the Trustees. She might have imposed a test. She might have said, such persons as are Trinitarians; she might have said, such persons as can repeat the Lord's Prayer, the Creed, the Ten Commandments, and Edward Bowles's Catechism. She knows how to impose a test, but she imposes none as to the Trustees; she merely says that they shall be "such persons as the present Trustees in their judgment and consciences shall think fit and approve of, who shall be a manager of the said Trust Estates together and equally with them the surviving Trustees, and have equally with them the same authority, benefit, and power respecting the Trusts hereby declared, and in case of the death of any such elected manager, to elect in like manner in his room another like manager, and that the election of every such manager for the time being shall be entered and registered in some or one of the books to be provided and kept as aforesaid." That is all she says; she imposes no test, she imposes no qualification, she leaves it entirely to the discretion of the Trustees.

Then in the other Deed of 1707, what does she say? "That whenever any Trustee shall happen to die, the said Dame Sarah Hewley during her life, and after her death, and in default of her nomination and election, the survivors of them the said Trustees, shall and may elect in the room of every such deceasing Trustee such person of reputation as they in their judgments and consciences shall think fit and approve of—": now it is not stated that those Trustees who are by this decree removed are persons of no reputation; it is allowed that they are above all exception as to station in life, character, and everything except religious belief: "such a person of reputation as they in their judgment and conscience shall think fit and approve of, who shall be a manager." The only qualification she imposes is, that the persons should be persons of reputation, and that they should be allowed to be Trustees.

Then, my Lords, why are your Lordships to be called upon to say that they should not only be persons of reputation and approved of by the Trustees, but that they should be Trinitarians; and if they are to be Trinitarians, why are you to stop there? Why should they not be Presbyterians? Why should they be Independents? Why should they be Baptists? Why should they be persons of a different belief from Lady Hewley, in respect to discipline, any more than in respect of doctrine? For, I believe, in the time of Lady Hewley, though the same attention was not given to discipline as had been half a century before,

still it was considered a matter of the utmost importance in every religious community. Well but, my Lord, as to belief, if belief were a ground for removing, it might be a reason for removing Mr. Wellbeloved and several others acknowledged to be Unitarians, but what reason is it for removing the two Mr. Heywoods? Now it is a remarkable thing, not only is it not proved that they are Unitarians, not only is it not alleged, but it is alleged in the Information that they are not Unitarians. I think it is at page 13, in the Appellants' Case, you will find this statement: this is the amended Bill, the amended Information I ought to say: "That save and except the said John Pemberton Heywood, Peter Heywood, George Palmes, and John Wood, each and every one of the said Trustees and Managers, Sub-Trustees and Governors of the said Charities hereinbefore last named, is or was in his religious belief what is commonly called a Unitarian." Then you have it declared by the Relators themselves, that the two Mr. Heywoods, Mr. John Wood, and Mr. George Palmes, are not Unitarians; why then, my Lords, are they to be removed on the ground of belief? that being the only ground taken by the Vice-Chancellor and the only ground taken by Mr. Baron Alderson. The Messrs. Heywood are not alleged to be Unitarians, and it turns out that they communicate with the Church of England. What says my learned friend Mr. Knight Bruce, and I was never more astonished in all my life, with respect to Mr. John Wood? "To be sure we allege he is not a Unitarian, but will any one say he is a good Churchman?"

Lord BROUGHAM.—That is not a matter of law.

Mr. ATTORNEY-GENERAL.—Your Lordships are called on to found your decree upon a colloquy between the Counsel at your Lorships' bar, upon a question put by Mr. Knight Bruce to Sir John Campbell. If I was to answer the question, I should say I know nothing to the contrary. I believe he goes to his parish church every Sunday, and conducts himself in a very exemplary manner as the father of a family, and for anything I know he is as orthodox as Mr. Knight Bruce himself, though I hope not with the same zeal and acrimony; but it is enough for me to point out that the Information acknowledges that John Wood is not a Unitarian. Why is he to be removed? Mr. Knight Bruce stated, what does not appear, that he was appointed since the suit began; no such thing appears; and I have no difficulty in stating the fact that he was a Sub-Trustee before the suit began.

Lord BROUGHAM.—He was the Recorder of York.

Mr. ATTORNEY-GENERAL.—Yes, and it so happens that the Recorder of York for seventy years has been one of those Trustees.

Lord BROUGHAM.—I know that Mr. Sinclair was.

Mr. ATTORNEY-GENERAL.—Yes, my Lord, and his immediate predecessor, and John Wood was the Recorder of York, was appointed Sub-Trustee for the management of the Almshouse long ago; since the suit began he was appointed a Grand Trustee I understand; but what reason is there for removing him, there being no charge against him? But what is to be said to the removal of Mr. Palmes? It was indispensably necessary, as my learned friend suggests, to have another Grand Trustee, otherwise there would not have been the four who are indispensably necessary to conduct the affairs of the Charity. Now, my Lord, what says his Honour the Vice-Chancellor as to Mr. Palmes? His Honour proceeds, not at all upon the ground of misconduct, merely upon the ground of religious belief. He says, "I therefore think that all the Trustees who are Dissenters, and deny the doctrine of our Saviour's divine person, and the doctrine of original sin, must be removed from being Trustees." Well, so far so good. "And though there is no objection personally to Mr. Palmes, yet as it appears that he is a member of the Church of England, he ought not to be continued a Trustee." I know not but my learned friend Mr. Knight Bruce must have been most exceedingly scandalized by this *ratio decidendi*,—because, says his Honour, this is the only reason of decision I can give; there is no objection personally to him. "Yet as it appears he is a member of the

Church of England, he ought not to be continued a Trustee." Therefore he is likewise removed. Now I should say, and with great submission, that a member of the Church of England might well be a Grand Trustee, whoever was the recipient of the bounty of Lady Hewley; but I ask your Lordship, what pretence is there for saying he may not be a Sub-Trustee of the Almshouse? He is merely to take care of 60*l.* a year, assigned for the Almshouse; and the Almswomen may be Church of England women. My learned friend has read Edward Bowles's Catechism, and he says, comparing it with Trinitarianism, it is most highly orthodox. Then there is nothing in Bowles's Catechism offensive to the most orthodox member of the Church of England, and God forbid there should be anything supposed to be so in the Ten Commandments or in the Apostles' Creed.

Then, my Lords, it comes to this peculiarity, as far as belief is concerned, that there being a charity which may be participated in by members of the Church of England, a person is not qualified to be one of the Trustees because he is a member of the Church of England. So much for Mr. Palmes, and unless you say he should be disqualified because he is a member of the Church of England, there is no other ground of objection to him. All that the Relators ask for and hope for, is the removal of such as the Court think ought not to be continued.

My Lords, I have now gone over two of the grounds upon which it is said that the Trustees may be removed. There is a third, that of misconduct. My Lords, his Honour was of opinion that no misconduct could be imputed to the Trustees. Mr. Baron Alderson was clearly of the same opinion, because that very learned and acute Judge intimated that the removal of the Trustees depended upon whether the discrepancy of a religious belief was a sufficient ground of removal. My Lords, I must confess that the noble and learned Lord Lyndhurst, who has left the House, took a different view of it. The noble and learned Lord, who is now returning to the House, took a different view of it: he did not say that Mr. Palmes was to be removed because he was a member of the Church of England; he did not think that the affairs of a Presbyterian charity could not be conducted by a Church of England man; nor did the learned Judge proceed upon the ground that the mere discrepancy of religious belief was a sufficient ground for removal; but his Lordship took the ground that there had been some misconduct.

Now, with the most sincere deference to that noble and learned Judge, his attention had not been directed to the distinction between Sub-Trustees and Grand Trustees, because as to Mr. Palmes, who was a Sub-Trustee——

Lord BROUGHAM.—I understand that Mr. Palmes' functions were confined to the Almshouse.

Mr. ATTORNEY-GENERAL.—Entirely, my Lord.

Lord BROUGHAM.—I am right in that?

Mr. ATTORNEY-GENERAL.—Yes, my Lord; he had nothing to do with collecting the rents, allowing Mr. Wellbeloved 80*l.* a year, or the allowance to the chapel at Rossendale, or the Manchester College, or any one of the other objects; he was simply a Trustee of the Almshouse; he had all the functions vested in him to make proper selections of the Almshouse women.

Lord BROUGHAM.—There is no dispute about that, Mr. Romilly?

Mr. ROMILLY.—No, my Lord; one of the Sub-Trustees, afterwards became a principal Trustee.

Lord BROUGHAM.—Grand Trustee?

Mr. ROMILLY.—Yes, my Lord.

Mr. ATTORNEY-GENERAL.—When Lord Lyndhurst confirmed that part of the Vice-Chancellor's Decree by which all were removed—

Lord BROUGHAM.—Including Mr. Palmes?

Mr. ATTORNEY-GENERAL.—Yes, my Lord,—his Lordship's attention could not have been directed to the distinction between the Sub-Trustees and Grand Trustees. It is not supposed that the Sub-Trustees necessarily become

Trustees: and while they are Sub-Trustees they have nothing to do
ɔe management of the general charity, they are confined entirely to the
ouse, which may be entirely occupied by members of the Church of Eng-
and therefore, as to Mr. Palmes, none of the misconduct, if there were
duct, laid to the charge of the Grand Trustees, could be at all imputed.
ROMILLY.—I do not know whether the Attorney-General would let
gest, upon the ground of misconduct, that there was evidence of mis-
ct applicable to Mr. Palmes.
ATTORNEY-GENERAL.—Their Lordships are asking the situation
ch he stood.
ROMILLY.—There were conditions as to the Almshouse not complied
y Mr. Palmes.
ATTORNEY-GENERAL.—I pointed that out as strongly as I could,
y learned friends Mr. Knight Bruce and Mr. Kindersley have been
and have pointed out no misconduct to be imputed to Mr. Palmes, as
an be imputed.
what is the head and front of the offending of the Grand Trustees? I
end that the Trustees are not to be removed merely for a mistaken
ent. There must be corruption, there must be some wilful misconduct.
my Lord, no corruption at all is imputed here; and I ought to point
your Lordships, on behalf of Mr. Wellbeloved, I complain serious-
Mr. Knight Bruce because he made a most violent attack upon him,
uld have your Lordships believe he was a Grand Trustee, and helped
f to a large portion of the rents and profits of this estate, though he is,
r. Palmes, a mere manager of the Almshouse, and has no voice in the
ement of the property, and never had: he was a recipient of the bounty
donor.
d BROUGHAM.—He has nothing to do with the apportionment of the
o himself?
ATTORNEY-GENERAL.—Not in the slightest degree has he anything
with the apportionment of the share to himself; and that is what I com-
of, that there was a strong insinuation that Mr. Wellbeloved, who was
ented as the robber of the widow and the orphan, had, in breach of his
pocketed that money which he ought to have distributed among fit ob-
f this Charity.
h regard to the Grand Trustees, my Lord Lyndhurst intimated his opi-
hat they showed an undue preference in favour of Unitarians. I do not
if it was present to his Lordship's mind, at that time, that there are 237
gations they were in the habit of assisting, and that of the 237 congre-
they annually and steadily assisted, there were 38, and no more,—I
wish to be most accurate,—of the 237 there were 38 congregations, and
re, that were Unitarian.
, my Lords, with great deference to the noble and learned Judge, I
see here anything like undue preference; it is true that they themselves,
ajority of them, were Unitarians, because the whole were appointed in
ace of their fathers and their ancestors, and it did happen that this
gation*, from having been Trinitarian, did become Unitarian; but
lk of them being Unitarians, so abstemious were they with regard to
g any particular favour to their own sect, that they only assisted 38 out
congregations; and, my Lords, of those 38 congregations that they did
here was only one that had not been regularly and uniformly assisted
the funds of Lady Hewley almost from the time that the Charity was
d. There was an exception in the chapel at Rossendale, which I
and by draw your Lordships' attention to; but, with that exception,
her 37 chapels they did assist were Presbyterian chapels, called Pres-

* The Congregation alluded to is Mr. Wellbeloved's Congregation.

byterian chapels, and they had had that assistance from the time of Lady Hewley.

Now when were they to have withheld that assistance which had been given in the time of their predecessors? It was about the middle of the eighteenth century that this heterodoxy was established, and before they were born this assistance was rendered to those chapels, and all that could be imputed to them was, that they continued to do what had been done by their predecessors. In addition to that, it appears that of five of the exhibitioners there were four that went to Manchester College at York; but your Lordships will bear in mind that all that was given to them was 20*l.* a year, and that they were at liberty to go to what college they pleased; that this was not a college originally established for the propagation of Unitarian doctrines.

Lord LYNDHURST.—Not originally established; but Mr. Walker proved it became so,—he was a Unitarian himself there.

Mr. ATTORNEY-GENERAL.—Yes, my Lord, it must be considered a Unitarian seminary; I wish to disguise nothing from your Lordship; no doubt it had become a Unitarian seminary.

Then, my Lords, it may be said, and that was the great charge of my learned friend Mr. Knight Bruce, that there was a most shameful application of the funds of the society, because Mr. Wellbeloved was allowed 80*l.* a year. My Lords, how much was his predecessor allowed in the time of Lady Hewley? 40*l.* a year. How much was the intervening minister allowed? 60*l.* a year. How much is Mr. Wellbeloved allowed? 80*l.* a year. Now, if your Lordships will look at the scale of allowance to any public functionary, either in the State or in the Church, I will ask your Lordships whether the remuneration has not, generally speaking, from the reign of Queen Anne, increased in a much greater ratio than from 40*l.* to 80*l.*? But then it is said that Mr. Wellbeloved had some other source of income which amounted to 200 or 300*l.* a year. When, in a deed of endowment of this sort, you read of poor and godly ministers, does that mean persons who are in a state of absolute indigence and destitution, and who would go upon the parish unless they had eleemosynary relief? No, my Lords, it meant those who are to receive a reasonable compensation for the services they render to their congregation out of the public fund. But, my Lords, including all that has been paid to Mr. Wellbeloved, and his 80*l.* a year, although these Trustees, the majority of them, were Unitarians, what is the proportion in which the funds are applied to Unitarians and other religious sects? My Lords, if you will take the trouble to look to the accounts which are annexed to the Case, by way of Appendix, you will find that not one-fourth of the whole of the funds that are collected have been granted to any Unitarian object, including the Exhibitions, including Mr. Wellbeloved's salary, including the allowance to Rossendale Chapel, and everything that can possibly be denominated Unitarian. Is that any undue preference? I can see no ground, I must say, for such a charge. Now it was undue preference only upon which Lord Lyndhurst proceeded. My Lords, as to the 80*l.*, it is material I should bring to your Lordships' notice what was said by Lord Lyndhurst upon that occasion. The Counsel for the Trustees—

Lord LYNDHURST.—Where is that?

Mr. ATTORNEY-GENERAL.—It is in the Report of the Case, it is an authentic and accurate report, in page 96. The Counsel for the Trustees is arguing in support of the allowance to Mr. Wellbeloved, and says, "Then with regard to Mr. Wellbeloved's stipend—" He is interrupted by the Lord Chancellor—"Do you mean as to the 80*l.*?" "Yes, my Lord." Lord Chancellor—"Assuming that it is proper to apply this fund to this particular object, the inculcation of Unitarian doctrines, indiscriminately with others, there is not much, as it appears to me, in the circumstance of the 80*l.* given to Mr. Wellbeloved in his situation." Therefore, my Lords, it was no ingredient at all in the judgment of that noble and learned Judge, and I think it will be no ingredient at all in the judgment of your Lordships. Then your Lordships

will always bear in mind, that in this part of the Deed of Lady Hewley, it is directed that the Charities she had given in her lifetime should be continued after her death. She had founded a chapel at St. Saviour Gate, at York; to that chapel, in which Dr. Coulton, the Rev. Mr. Hotham, the Rev. Mr. Cappe, and the Rev. Charles Wellbeloved successively officiated, she herself, in her lifetime, had allowed 40*l.* a year to the minister who should officiate in that chapel; that was to be continued. Then it was to be continued on the same scale; and can your Lordships say that that scale has been at all exceeded, when, in the reign of Queen Victoria, or George the 4th, or William the 4th, 80*l.* a year was given, when 40*l.* was given in the reign of George the 1st? She expressly directs that "whatsoever charitable dispositions or allowances by the said Dame Sarah Hewley shall have been made to persons or places in York or Yorkshire, immediately or shortly before her death, shall be continued and paid out of the said clear and residuary rents, issues, and profits, of the premises, by the said Trustees and Managers for the time being, until they, or four of them at least, shall see just reason to discontinue, alter, or determine the same, or any of them respectively." Therefore, in making this allowance to Mr. Wellbeloved, they have merely followed the express injunctions she laid upon her Trustees.

Now, my Lords, what remains? There is the endowment of the Chapel at Rossendale, of which your Lordships will find, at page 17 of the Appendix, the true account.

Now this was the only new chapel to which any benefaction was given (it is page 17 of the Case). In the first place, my Lords, is there any one of those Trustees who has been removed, who is personally connected with this grant to Rossendale Chapel? My Lords, I condemn most severely that memorial. I did so when I first had the honour to address you. Every sect and every denomination must deplore that such language should be used; it is irreverent, and is unbecoming when applied to any doctrine, however much it may be disapproved of. But in order to remove these fourteen Trustees, it should have been shown that they were implicated in this transaction, and that they approved of that memorial. So far from that being the case of the fourteen Trustees, a good many have been appointed since the year 1815. This was in the year 1815, twenty-four years ago; a good many of the Trustees have been since appointed; and it is not shown that any one of those fourteen individuals was cognizant of this, that it ever was brought to his notice, that he in the slightest degree approved of it, or would not have condemned it as severely as themselves. My Lords, they say, they "believe it to be true that a memorial from Rossendale was presented to them, because it is required by their rules that a memorial should be presented;" (they are now talking in their aggregate or corporate capacity;) but they say that "such memorial was not preserved, and they are not able to set forth the contents thereof; however, they do not believe that the same was to the purport or effect set forth in the Information, because although they have no recollection of the particular purport of the memorial so presented, they are convinced that if the same had been to the effect stated in the Information, the same would not have been recommended and signed, as was required, by two respectable neighbouring ministers, neither would the Trustees have given attention to such statements." This is the answer of the Trustees; there is no proof brought on the other side of any inquiry on the subject; and in the face of this denial, this memorial respecting Rossendale Chapel could be no legitimate ingredient with respect to the fourteen Trustees who were at one fell swoop removed.

My Lords, a very severe censure has been passed upon the conduct of Mr. Wellbeloved. My Lords, I believe it is very much to be lamented that Mr. Wellbeloved should err with regard to any of his religious tenets; but setting that aside, I believe that a more pious, a more honourable, and a more upright, a more amiable man does not exist; and I do not say that upon my own authority. My Lords, I find when this Case was discussed before my Lord

Chancellor Brougham, that his Lordship made use of these observations: "Mr. Wellbeloved, one of the most virtuous, pious and learned men who, I will venture to say, adorn any church. Of his virtue and piety the whole county in which he lives is a witness, and especially the congregation that have long benefited by his labours. I add to my testimony my prayer that they may long benefit under his ministration." Then there being an allusion to the controversy carried on between Mr. Wellbeloved and a member of the Church of England, his Lordship said,—"The controversy was carried on without the least deviation from the rules of humanity, piety and charity, exhibiting to the controversial world an example, of which their whole history shows polemics stand greatly in need, that learning, sincerity and zeal may well be united with the most entire forbearance and meekness." Well, then, my Lords, no misconduct can possibly be imputed to Mr. Wellbeloved, as a Trustee, for he was merely a Sub-Trustee, and it is impossible to say that in that capacity he has in the slightest degree misconducted himself.

But, my Lords, I can find no ground upon which any of these Trustees can be removed, as having misconducted themselves: they have done their best, my Lords, to carry into effect what they believed to be the intention of the Foundress; no complaint whatever was made against any of them before this Information was filed; and the moment that the Information was filed, they stopped all the payments that have been complained of: the fund has been accumulating from that day to the present; not a shilling has been paid to Mr. Wellbeloved, not a shilling has been paid to any other of the recipients of the bounty of Lady Hewley with respect to whom this Information is filed, and these Trustees humbly and respectfully in their answer solicited the directions of the Court; they were anxious to receive those directions, and by those directions they were willing to abide. Then there being no corruption to be charged against them and no wilful negligence, there was no ground for the removal of any of them, even if it was improper that they should distribute any part of the funds of this Charity among persons who entertain what are commonly called Unitarian opinions; there ought merely to have been the direction of the Court that in future the distribution should be different, and if such a direction had been given, it would have been implicitly obeyed.

Here, my Lords, let me introduce a word with respect to the costs of the Appeal. My learned friend Mr. Knight Bruce, from mistaken instructions, stated that the Trustees had received the costs of the abortive hearing before Lord Brougham; that is not so, they have not received one shilling of those costs.

Mr. BLOWER.—They have been paid costs out of pocket, 545*l.*

Mr. ATTORNEY-GENERAL.—I humbly submit to your Lordships, according to the principles upon which Charity Informations are conducted, that if they were justified in bringing the Appeal before the Lord Chancellor, they are entitled to their costs, and if they are justified in bringing this Appeal to the Bar of this most Honourable House, then they are entitled to their costs, whatever may be the result. One duty of the Trustees is to be sure that the Charity is properly regulated, and that they are acting within the scope of their authority. My Lords, these Trustees have proceeded as their predecessors had done for a period of seventy years; an Information is filed against them, and there is a Decree against them by the Vice-Chancellor: now, speaking with all due respect of any tribunal of the country, was it to be said that the Trustees were bound at once, without taking the opinion of the Lord Chancellor, or taking the opinion of the House of Lords, to submit to that decree by which all the Trustees were removed, by which Mr. Palmes was removed because he was a member of the Church of England? Were they bound to submit to a decree which proceeds, as I think I have already shown, upon the ground that the new version of the Scriptures has met with his Honour's disapprobation, and he thought there were several mistranslations in it, though his Honour says that he cannot connect any of the parties with it, except that they subscribed; was it the duty of the Trustees, without

taking the opinion of the Lord Chancellor, to submit to such a decree upon such reasons?

My Lords, his Honour says, "I find by the evidence that Mr. Wellbeloved and Mr. Kenrick and some third Trustee were subscribers to the Institution, called the Unitarian Society, which enumerated amongst the books it circulated this Improved Version of the Scriptures, as it was called; and my opinion is, that the question being, not who should participate, but what given individuals should be excluded, it is satisfactorily made out that no person who believes as Mr. Wellbeloved has stated in his sermon he believes, or who acts as Mr. Wellbeloved has acted, with regard to supporting that Unitarian Society, which had published such a book as the Improved Version, could be considered as entitled to share in the Charity of Lady Hewley." "I have no evidence whatever to induce me to believe that he had anything to do with the Improved Version, more than in assisting by his subscription the publication of it, nor have I ever heard, nor have I the slightest conception, who were the fabricators of the book." But he says, "Therefore my decree must in substance declare that no persons who deny the Divinity of our Saviour's person, and who deny the doctrine of Original Sin, as it is generally understood, are entitled to participate in Lady Hewley's Charity, and that the first set of Trustees must be removed."

My Lords, I must say, with all due respect to his Honour the Vice-Chancellor, that it was the duty of the Trustees, that it was a mere matter of course that the Trustees, beginning with his Honour's court, not submitting to his judgment, should take the opinion of a higher tribunal with respect to the regulation of the Charity,—that it might be seen whether all the Trustees were properly removed, and whether the ban with regard to religious opinions applied to the objects of eleemosynary relief, as well as the preachers of the Gospel. If it were not so, it was contrary to the principles upon which Courts of Equity deal with charity trustees, and those Trustees did no more than their duty in bringing it before the Lord Chancellor; and if Lord Lyndhurst was right in affirming it *simpliciter*, the costs of the Appellants, the Trustees, ought to have been allowed, and in respect of that your Lordships will be called upon to reform the Decree. But, my Lords, upon the grounds I have pointed out, I submit it is impossible that the Decree can stand, and whatever opinion your Lordships may come to upon some of the questions debated at the bar, those grounds will offer an irresistible argument for the allowance of the costs of the Appellants.

My Lords, I now come to that branch of the Decree which respects the recipients; and it will be of the greatest importance that I should impress upon your Lordships' minds the different classes into which the objects of Lady Hewley's bounty are divided.

My Lords, the profits of this estate were to go to assist poor and godly preachers for the time being of Christ's Holy Gospel, to assist poor and godly widows of the same description of persons, to encourage and promote the preaching of Christ's Holy Gospel in poor places, and to assist in the education of young persons intended for ministers of Christ's Holy Gospel. Then there was a fifth class in whose favour a donation is made, in these words: "And as to all the surplus and remainder of the aforesaid clear and residuary rents, issues and profits of the premises, from and after the decease of the said Dame Sarah Hewley, the Trustees should employ and dispose of the same in and for the relieving of such godly persons in distress, being fit objects of the said Dame Sarah Hewley's and the Trustees' and Managers' Charities, as the said Trustees and Managers for the time being, or any four or more of them, shall think fit." Then, my Lords, the sixth was for the maintenance of the Hospital. It subdivided itself therefore into two heads; there was the preaching, and the eleemosynary relief.

Now, my Lords, let us look at the Decree, and see how it deals with all the objects of her bounty.

My Lords this is the Decree; it declares, "that ministers or preachers of

what is commonly called Unitarian belief and doctrine, and their widows and members of their congregations, and that persons of what is commonly called Unitarian belief and doctrine, are not fit objects of, and are not entitled to partake of, the Charities of Dame Sarah Hewley in the pleadings of this cause mentioned."

Now, my Lords, this clearly applies to each and every of those six classes, and amongst others to the fifth class of godly persons who should be considered fit objects of the bounty of the Trustees. That is not asked in the prayer of the Information; more is given than is demanded. If you look at the prayer of the Information, you find nothing that would embrace that fifth class of the objects of her bounty; there was no complaint in regard to those who had been casually relieved, being in a destitute condition. In page 15, you will find the prayer of the Information, and you will find nothing to embrace this class of recipients of Lady Hewley's bounty. The prayer is, "That it may be declared by the Decree of the Court, that ministers or preachers of what is commonly called Unitarian belief and doctrine, and their widows, and members of their congregations, or persons of what is commonly called Unitarian belief and doctrine, are not fit objects of Lady Hewley's Charity; and that exhibitions to Manchester College, or to any other college or school where what is commonly called Unitarian belief or doctrine is taught or inculcated, are not fit exhibitions for promoting the educating of ministers of Christ's Holy Gospel, within the intent and meaning of Lady Hewley's Charities. That the allowance of 80*l.* to the defendant Mr. Wellbeloved, as the preacher of Saint Saviour Gate Chapel, was and is an unfit allowance or distribution of the Charity-funds, by reason of his having been and now being one of the Sub-Trustees or Managers of a part of the Charities, and by reason of his not being a poor preacher, and not being a godly preacher of Christ's Holy Gospel, within the intent and meaning of Lady Hewley's Charity, and by reason of what is commonly called Unitarian belief and doctrine being now preached and inculcated in Saint Saviour Gate Chapel; and that such allowance of 80*l.* be wholly discontinued in future, and that such order may be made as to the past payments of the said allowance of 80*l.* to the defendant Mr. Wellbeloved as to the Lord Chancellor shall seem just, and that all the objects of Lady Hewley's Charities may be decreed fairly and in such manner to participate in the Charity-funds as she meant and intended; and in particular that a fair and just proportion thereof may be distributed to and amongst poor godly widows of poor and godly preachers of Christ's Holy Gospel, giving preference to York, Yorkshire, and the northern counties; and that a fair and just proportion thereof may be applied for the encouraging and preaching of Christ's Holy Gospel in poor places, and that Lady Hewley's qualifications and conditions for the admission of almswomen to the Hospital or Almshouse, and her rules for the management and regulation of the Hospital, or such of them as to the Lord Chancellor shall seem meet, may be restored or enforced in future in such manner as the Lord Chancellor shall be pleased to direct; and that his Lordship will be pleased to declare by the Decree of the Court, that such Dissenters alone as are now commonly called orthodox Dissenters, and as would have been within the protection of the Act of Toleration of the 1st of William and Mary, at the time of the foundation of the Charities, and would not then have been subject to the penalties of 9th and 10th William III. against blasphemy, can now be considered as coming within the intent and meaning of Lady Hewley, and as entitled to participate in the benefit of her Charities; and that the Defendants, the present Trustees, Sub-Trustees, and Managers of the Charities, or such of them as to his Lordship shall seem proper, may be removed by the Decree of the Court from being Trustees, Sub-Trustees, or Managers of the Charities."

Now, my Lords, that is the whole scope of the prayer of the Information. Well but, my Lords, if the Decree stands, it applies to the objects of eleemosynary relief just as much as to preaching. If it stands, for all time to come, it

would be a breach of trust in any Trustee to give a penny roll, paid from the bounty of Lady Hewley's Charity, to any object, however deserving and however destitute, if unfortunately that individual should entertain opinions generally called Unitarian, although those opinions may not have been expressed; this being totally different from preaching; and when it is proved that there is nothing at all illegal in this, because, according to the case of Da Costa *v.* Depas, though it be unlawful to establish a synagogue for the purpose of propagating the Jewish religion, it is not unlawful to establish a charity for the relief of persons of the Jewish persuasion. There is nothing unlawful in establishing a charity for the relief of Gentoos, or Mahometans, or Pagans. We would not allow a charity to propagate their doctrines; but the individuals who maintain those opinions may receive charitable relief.

Now, whatever force there may be in my learned friend's argument with regard to the distribution of the Charity to preachers of the same religious persuasion as the Donor, what pretence is there for saying that as far as eleemosynary relief is concerned, doctrine is an essential part of the consideration of the trustee before the charity is to be distributed,—the words of the Foundress being, "That the Trustees should employ and dispose of the same in and for the relieving of such godly persons in distress, being fit objects of the said Dame Sarah Hewley's and the Trustees' and Managers' Charity, as the said Trustees and Managers for the time being, or any four or more of them, shall think fit"? Have they examined any of their learned divines to say that "godly" in this sense of the word meant "Trinitarian," that "godly" in this sense of the word meant "Orthodox," that "godly" in this sense of the word has any application to doctrine at all? My Lords, they do not impute that, and in their Case there is not a tittle of evidence to support such a position; "godly" there has no reference at all to doctrine or belief, but merely to morality and good conduct. My Lords, I apprehend "godly" is here used in the same sense in which we find it in the authorized translation of the Bible, in the 2nd chapter of the epistle to Titus, the 11th and 12th verses: "For the grace of God that bringeth salvation hath appeared to all men, teaching us that denying ungodliness and worldly lusts, we should live soberly, righteously, and godly in this present world." "Godly" there is opposed to ungodliness, ungodliness being considered immoral conduct, and not that heresy into which unfortunately a Christian may fall: "Teaching us that denying ungodliness and worldly lusts, we should live soberly, righteously, and godly in this present world."

My Lords, Baxter, in his paraphrase upon this text, shows what he supposed "godly" here to mean, and the same meaning which he gives to the word "godly" in this text must be given to it in this part of Lady Hewley's Deed. His paraphrase upon this text is, "For the grace of God by a Redeemer, which bringeth salvation, is made known now to all sorts of men, and extendeth to servants as well as masters, teaching us all (not the vain speculations of the world, but) to deny all doctrines and practices which are ungodly, and all worldly lusts of sensuality or covetousness, and that we should live in this present world soberly and temperately to ourselves, righteously and charitably to others, and holily and obediently to God."

Lord KENYON.—From what are you reading that?

Mr. ATTORNEY-GENERAL.—It is Baxter's paraphrase of the Scripture, a book, no doubt, your Lordships are familiar with.

Mr. ROMILLY.—I do not object to the Attorney-General citing these passages, which were not mentioned in the opening; but, on the part of the Relators, we ought to be entitled to some reply if any new passages are brought forward now.

Mr. ATTORNEY-GENERAL.—Surely, I may cite a text of Scripture—

Mr. ROMILLY.—I do not object to the Scripture, but to Baxter.

Mr. ATTORNEY-GENERAL.—without it being supposed that I am citing an authority.

LORD CHANCELLOR.—It is an illustration, and not an authority.

Mr. ROMILLY.—It is an authority from Baxter, as to the way in which he considered the word "godly."

Mr. ATTORNEY-GENERAL.—If that gives my learned friend the smallest uneasiness, I withdraw the commentary and adhere to the text.

My Lords, for these reasons, I apprehend that this branch of the Decree, speaking of course always with due respect, cannot possibly be supported, because it would exclude in all times to come any persons in a destitute condition,—however godly they might be, however meritorious, however destitute, it would exclude them from relief from this Charity, if it should happen that they were heterodox in any of their opinions, or at least if they were not strict Trinitarians. Whatever sense Lady Hewley might have intended to affix to the word "godly," in the other part of the Deed, it seems utterly impossible to contend, when she merely says "godly persons," she there refers to belief, and does not intend conduct and behaviour.

But, my Lords, I now come to a more important branch of the Case, which is, the distribution of the Charity among those who are to be considered as "poor and godly preachers for the time being of Christ's Holy Gospel." May not Unitarian Dissenters be included in that category? That, my Lords, is the great question. Now, my learned friends have tried to place us in a dilemma here; they have said, either evidence is to be admitted, or it is not to be admitted: if evidence is not admitted, says Mr. Kindersley, you have no claim; if evidence is admitted, still you have no claim. *Si, quacunque via data*, we are to be excluded. Now I first submit to your Lordships, that if no evidence at all were given, your Lordships might well say that Nonconformist ministers of the Gospel are to be included, and are meant by the description that you find in this Deed of Lady Hewley, by stating that all the benefit she had before distributed should be continued; and it appearing that she had conferred a bounty upon this Chapel at St. Saviour Gate, and that it was admitted that that was a Presbyterian congregation, and not belonging to the Church of England, it is quite clear, looking at the date of the Deed, that Nonconformist ministers ought not to be excluded. But, my Lords, we are by no means in the dilemma that my learned friend supposes, because we do not say that evidence is to be entirely excluded, although we deny that all the evidence is to be admitted, or is to be acted upon, with respect to which so much argument has been used. We do not say that the evidence is to be entirely excluded, but we say that a great part of the evidence that has been admitted with respect to the private opinion and belief of Lady Hewley, ought to be excluded, or, if admitted, it ought not to be acted upon. It is upon the private opinion of Lady Hewley that this Decree rests, and this Decree cannot be supported if the private opinion of Lady Hewley is not a legitimate ground upon which the Decree can be supported. I have never disputed for one moment that evidence may be admitted to show in what sense the words "godly preachers of Christ's Holy Gospel" were used in the time of Lady Hewley; I have not said that with regard to the Will no evidence can be received. Facts and circumstances may be admitted. If there is a devise in favour of children, you will see what children there are, and whether they be legitimate or illegitimate; but what I deny, my Lords, is this, that you can receive evidence with respect to the sense in which the words are used by that individual. When you have got the facts and circumstances, then the same interpretation will be put upon the words, whoever may be the testator, whatever private sentiments the testator may entertain, whatever may be his inclinations or affections or propensities or opinions.

My Lords, my learned friends alluded to Mr. Wigram's very excellent work upon the admissibility of parole evidence; I shall be perfectly content to abide by the canons there laid down, and which have been referred to. Now he is speaking of wills, and, my Lords, his first proposition is this: "A testator is always presumed to use the words in which he expresses himself according to

their strict and primary acceptation, unless from the context of the will it appear that he has used them in a different sense; in which case the sense in which he thus appears to have used them will be the sense in which they are to be construed." I am perfectly content to adopt that proposition. "Secondly, where there is nothing in the context of a will from which it is apparent that a testator has used the words in which he has expressed himself in any other than their strict and primary sense, and where his words so interpreted are sensible with reference to extrinsic circumstances, it is an inflexible rule of construction that the words of the will shall be interpreted in their strict and primary sense, and in no other, although they may be capable of some popular or secondary interpretation, and although the most conclusive evidence of intention to use them in such popular or secondary sense be tendered." Therefore you are never to receive evidence of the sense in which particular individuals meant to use particular words; therefore you are not at all to inquire into the individual opinions of the persons who use the words, because when you inquire into the individual opinions of the persons who used the words, that is merely a medium of arriving at the sense in which they are used by that individual. "Thirdly, where there is nothing in the context of a will from which it is apparent that a testator has used the words in which he has expressed himself in any other than their strict and primary sense, but his words so interpreted are insensible with reference to extrinsic circumstances, a court of law may look into the extrinsic circumstances of the case to see whether the meaning of the words be sensible in any popular or secondary sense, of which, with reference to these circumstances, they are capable." Now there is no pretence for saying here that this Will is insensible, that this Deed is insensible, because it very distinctly and definitely points out the class of persons among whom this bounty is to be distributed. Then the fourth proposition is, "Where the characters in which a will is written are difficult to be decyphered, or the language of the will is not understood by the Court, the evidence of persons skilled in decyphering writing, or who understand the language in which the will is written, is admissible, to declare what the characters are, or to inform the Court of the proper meaning of the words." Let it be supposed there is some obscurity here with regard to the words "godly preachers of Christ's Holy Gospel," evidence is then to be admitted to show in what sense those words were used in the beginning of the last century; we have not objected to that: it is sworn that these words are meant to denote Protestant Nonconforming ministers. But, then, what I do object to is this,—the sense in which Lady Hewley used the words; what I submit to your Lordships is this, that the same sense is to be put upon the words by whomsoever they were used at the time the Deed was executed.

My Lords, no answer has been given to that which I ventured to throw out for the consideration of my learned friends as to the consequence of the doctrine for which they contended. If we could show by a letter in the handwriting of Lady Hewley that she really was a Socinian, although she attended Dr. Coulton's preaching, would that give a different interpretation to her Deed? If it could be proved in the most distinct manner that, although she went to that congregation, she went likewise to another congregation where Socinian doctrines were taught, would that put a different interpretation upon her Deed? How then would a court of justice be puzzled! My Lords, it is not very uncommon for persons to attend Divine worship in chapels of different persuasions, and if Lady Hewley had done the same, what was to be done with the Deed she executed? As far as she went to the Presbyterian congregations, according to my learned friend none but Presbyterians would share her bounty; but going to a Socinian congregation, the Presbyterians are to be entirely excluded. If it had turned out that she was a Roman Catholic, what then was to be done? Would you have given a different meaning to those words, "godly preachers of Christ's Holy Gospel"? Would it then have been confined to Catholic priests? My Lords, what I submit to your Lordships is,

that, according to the well-established rules of evidence, you cannot admit evidence to show the sense in which words are used by a particular individual, that you cannot inquire into the opinions of that individual. My Lords, that evidence in this case was admitted; that evidence is acted upon. You begin with the will of her husband, merely as a medium of arriving at her private opinions; you receive her will executed after these Deeds, merely for the purpose of arriving at her own private opinions; you receive in evidence the funeral sermon preached by Dr. Coulton, merely for the purpose of arriving at her private opinion. There are other pieces of evidence which have been received, merely with a view of arriving at her private opinion. Now if your Lordships will turn to page 42 of the Respondents' Case, you will find that it is upon her private opinion that they rest their case. The first reason is, "Because Lady Hewley, by whom the Charities in question were founded, was a Trinitarian in belief and doctrine, and the application of her Charities to the benefit of ministers or preachers of what are commonly called Unitarian belief and doctrine, and their widows and members of their congregations, was and is inconsistent with her design and intention." This is inconsistent with her design and intention, because she was a Trinitarian in belief and doctrine.

My Lords, Lord Lyndhurst in giving judgment proceeds upon the same ground; his Lordship says, at page 11 of this edition, "The first question for consideration, in order to lead us to a correct conclusion upon the point, is as to the particular religious opinions of Lady Hewley, the Foundress of this Charity:" this is the keystone of this judgment, "the particular religious opinions of the Foundress of this Charity." "There can be no doubt that she was in her religious faith and opinions a Presbyterian; it is a matter of history that she was so; it is admitted by the answer of Mr. Wellbeloved and other of the Defendants; it is proved by the evidence in the Cause, by the evidence of those learned and respectable witnesses to whom the learned Judge has referred; it is not contested by any contradictory evidence; it is proved that she attended the Chapel which she herself, I believe, built, and in part endowed, St. Saviour Gate Chapel, and which is admitted to have been a Presbyterian Chapel. Dr. Coulton, the preacher at that Chapel, was an acknowledged Presbyterian. He was her religious adviser; he was the executor to her will; he preached her funeral sermon. All these circumstances lead to the conclusion that she was in her opinions a Presbyterian." Thus the noble and learned Judge goes through this elaborate reasoning, and comes to this conclusion; and here your Lordships see why the evidence which was adduced merely for the purpose of getting at the private opinions of Lady Hewley——

Lord LYNDHURST.—For the purpose, rather, of showing the class of persons to whom she belonged. The object of the evidence was to show to what class of persons she belonged, that she was a Presbyterian. Then I think they went on to show the doctrines of the Presbyterians, and then to show that her particular opinions did not differ from those of the great body of Presbyterians. Then the question will be, what particular class of Presbyterians would be meant by godly persons?

Mr. ATTORNEY-GENERAL.—Not looking at the Deed?

Lord LYNDHURST.—No.

Mr. ATTORNEY-GENERAL.—Not looking at what she said, or did, but at what was probable? I acknowledge there is a great deal of plausibility in this reasoning: Lady Hewley was a Trinitarian; can it be supposed that she would do anything to encourage the propagation of Unitarian tenets? That may be very plausible, but that is reasoning which it is my duty to say the law of England will not tolerate. It is only out of a court of justice that such reasoning can be resorted to. You are to learn her intention from what she has said, and from what she has said in the Deed. It is not what she meant, but what she says that she meant; and that you could only learn from the language that she has employed. Anything that she said or did respecting the

Charity, of course, is to be admitted; that is legitimate evidence of what her intentions were. I could find no fault at all with evidence about the erection of St. Saviour Gate Chapel, or the reason of it, because according to the Deed the donation to that Chapel was to be continued: I can find no fault respecting the Regulations of the Almshouse, with respect to Edward Bowles's Catechism, or the Lord's Prayer, the Ten Commandments, or the Creed. All she did with respect to the Charity was legitimately received and is to be considered; but when you go to her private opinions entirely, and what she has said independently of the Deed she has executed, then I venture to say that is erroneous.

Lord LYNDHURST.—Do you mean to say that it was not admissible evidence, or not admissible evidence to prove she was one of the class of persons called Presbyterians, because that was the object?

Mr. ATTORNEY-GENERAL.—I say it was not admissible evidence to prove her private opinions. If admitted, it ought not to be acted upon. I say it comes to that, if your Lordship does me the honour to address me, and I would say that these Deeds are to receive the same interpretation were Lady Hewley a Papist, were she an Episcopalian, or an Unitarian, or a Socinian. You may receive evidence to know in what sense particular words were used at a particular era—

Lord LYNDHURST.—By a particular class of persons. Must they be used universally in one sense, or if there is a very large and known class of persons which use particular terms in a particular sense, the evidence of that fact is admissible, is it not?

Mr. ATTORNEY-GENERAL.—I apprehend it is not.

Lord LYNDHURST.—I do not apprehend that persons belonging to the Church of England call these persons "godly preachers of Christ's Holy Gospel."

Mr. ATTORNEY-GENERAL.—I apprehend they might; an episcopalian might in these terms leave 500*l.* for persons not ordained by a bishop.

Lord LYNDHURST.—Suppose a member of the Church of England should leave 500*l.* a year to godly preachers of Christ's Holy Gospel, that would have gone to members of the Church of England?

Mr. ATTORNEY-GENERAL.—I say, certainly not.

Lord LYNDHURST.—Why not?

Mr. ATTORNEY-GENERAL.—I say it will not, and I say it for these reasons: if it be proved in general society that particular phrases have a particular meaning, for instance Puritans, I would say if a member of the Church of England were to leave a certain sum of money yearly to be distributed among Puritans, of course Puritans would take it.

Lord LYNDHURST.—"Puritans" is a known term among persons of the Church of England, as well as that class of persons themselves; but there is nothing to show that members of the Church of England style Dissenting preachers "godly preachers of Christ's Holy Gospel,"—is there?

Mr. ATTORNEY-GENERAL.—The evidence comes to this, that at that time of day Nonconformist ministers were called "godly preachers of Christ's Holy Gospel."

Lord LYNDHURST.—Yes, that they were so denominated by members of their own class, or all Dissenters; and it was known by members of the Church of England that they were so denominated.

Mr. ATTORNEY-GENERAL.—They might be so denominated, even if it was a nickname, and they might be so denominated by members of the Church of England and by Dissenters. I was going to venture to make this supposition, that a member of the Church of England might leave 500*l.* a year at that time to be distributed among the clergy of the Church of England in orders under episcopal ordination, and 500*l.* a year to be distributed among "godly preachers of Christ's Holy Gospel;" what would be the interpretation of that?

Lord LYNDHURST.—If you put one in opposition to the other, a parti-

cular construction might arise out of it; but if he had merely said, "I leave 500*l.* a year to godly preachers of Christ's Holy Gospel," and it was said in explanation that he had been a member of the Church of England, it is difficult to say that it would go to Dissenters.

Mr. ATTORNEY-GENERAL.—It is in evidence that, generally speaking, at that time, Dissenting ministers were so denominated.

Lord LYNDHURST.—By all classes of Dissenters, and it was known to members of the Church of England that they were so denominated. The person who made the will in this case was a Presbyterian. Is not that evidence to show that, being a Presbyterian, the words were used in the sense in which Presbyterians used them? The greater part of the evidence was to show she was a Presbyterian. A great deal was negative, to show she did not differ from the tenets entertained by a great majority of Dissenters.

Mr. ATTORNEY-GENERAL.—In that case, the only evidence admissible would be that she was a Dissenter, not that she was a Presbyterian, and was a believer in Christ's Holy Gospel. She might have been a Dissenter, and have been a Dissenter holding tenets totally different from the Presbyterian sect; and it is in respect of her holding Presbyterian tenets, as it is insisted upon, that this construction is put upon her Will. It is not said that "godly preachers of Christ's Holy Gospel" is a term used only by Trinitarians; it is not said this is a term only used by those who believe in the doctrine of original sin, or the atonement, or the final decrees. It was a term generally used in society, at that time, to denote a particular class in society, that class being Nonconformist ministers. Evidence, therefore, might well be received to show the meaning to be ascribed to the term, let it be used by whomsoever it might. But what I insist upon is this, that you cannot receive the evidence of the particular religious tenets of the person who used it. I contend, and I have not heard any answer to the observation, that it would be open to us to show she was a Papist, was a Socinian, that she was professing one religion and belonged to another; and if evidence cannot be received as to religious charities, I contend it is not to be received as to medical or any other charities. If you are to know whether inoculation is to be admitted into an infirmary or hospital, or vaccination, there being some general word to embrace both, are you to inquire whether the person who founds the charity adhered to Lady Mary Wortley Montague's system of inoculation, or Dr. Jenner's system of vaccination? The particular sense to be imposed upon the word may be received; it may be illustrated by parole evidence; but then you cannot admit evidence to show that a different sense is to be put upon those words whether they are used by A, B, or C.

My Lords, it is very material that your Lordships should bear in mind, that the evidence is not that they were used as the noble and learned Lord had supposed, not that they were used by a particular class, but that this was the sense of them at the time that the Deeds were executed: "That the words or terms godly persons," this is the evidence given by the Rev. James Bennett, "That the words or terms godly persons, and godly ministers, or godly preachers, were adopted, used, or employed, in the conversations, and writings, and publications of the time in the last foregoing Interrogatory mentioned, for the purpose of describing or designating Dissenters and Dissenting ministers generally."

LORD CHANCELLOR.—Whose evidence is that?

Mr. ATTORNEY-GENERAL.—Page 95 of the Respondents' Appendix. Then at page 96, we have the evidence of the Rev. Manning Walker, "That the words or terms 'godly persons' and 'godly ministers,' or 'godly preachers,' were adopted and employed in the conversations and writings and publications, at the time last-mentioned, by religious persons, to denote those whom they regarded as pious and specially devoted to the service of God, and by others as a cant term or word of reproach, principally against Dissenters and Dissenting ministers or preachers, they being Trinitarian, and none else; for the idea

of godliness would not and could not be attached to any but those who believed the doctrine of the Trinity, and so necessarily embraced all who were Presbyterians, Congregationalists or Independents, and Particular Baptists."

Now, my Lords, my learned friend has not made a single observation upon any of the cases I have adduced, to show that parole evidence cannot be admitted for the purpose of putting a particular sense upon words used by any particular individual; I have cited a long class of cases upon the subject, which I will not repeat, because my learned friend has not impugned the authority of any one of them. Has he brought forward a single case to show that parole evidence may be admitted to show the particular sense in which words have been used by an individual? Not one. He has brought forward cases that I do not dispute, to show that facts and circumstances may be given in evidence, to prove the application and operation of the words used in a will or deed, but the same operation would be given to those by whomsoever executed. That is the distinction upon which I rest; but the object of showing the personal views of Lady Hewley, is to give a totally different meaning to a Deed executed by her, to what would be given to a deed executed by another; and it comes to this, that, unless I am wrong in that which I am contending for, I apprehend that the Decree cannot be supported. If evidence may be received to show in what sense the words are used by the individual, this evidence is properly admitted and acted upon; but if evidence cannot be received, or if received not acted upon, to show the sense in which the words are used by the individual, then the Decree, resting upon that principle, must be considered erroneous.

Now I am authorized, by what has fallen from a noble and learned Lord, to suppose that, according to his view, and from his taking the same view at this moment as when he pronounced that decree, a different interpretation may be put upon a deed, according to the religious views of the party executing the deed; if he was a member of the Church of England, one interpretation; if a Dissenter, another interpretation. That is what I beg leave very respectfully to combat; I say that this is a deed,—it is a deed solemnly, and carefully, and properly executed; and the interpretation to be put upon the deed is matter of law, and cannot in the slightest degree be influenced by the character and private opinions of the party by whom it was executed. The only authority which is supposed to justify this is the Attorney-General *v.* Pearson. I find that my Lord Lyndhurst, I think, refers to it; he says the evidence in this important part of the Case—

Lord LYNDHURST.—Have you got the Interrogatory here, the 17th Interrogatory?

Mr. KNIGHT BRUCE.—Your Lordship will find an index at the beginning which will show you the page; it is page 80 of the Respondents' Appendix.

Mr. ATTORNEY-GENERAL.—Now, my Lords, the only case upon which it is supposed that this doctrine of individual opinion can be supported, is the Attorney-General *v.* Pearson; and, my Lords, after a careful examination of that case, I will venture to say that no such doctrine is to be extracted from it. The Attorney-General *v.* Pearson is in the 3rd volume of Merivale, p. 353. There, my Lords, all that Lord Eldon would admit, were acts that were done with respect to the particular transaction, not anything respecting the opinion of the founder. And there your Lordships may recollect, that a number of different individuals had contributed towards a chapel at Wolverhampton, and the question was, under what doctrine or discipline this chapel was to remain. There was not there anything like the solemn deeds that there are here executed, expressing the will of the founder. In the Attorney-General *v.* Pearson, there were a number of persons who had contributed, but who had never come to any regular agreement, and there it became necessary to inquire into what had been done. The usage was admitted, but nothing beyond the usage. Now, my Lords, for that purpose I will refer your Lordships to what

is said by Lord Eldon; I think you will find nothing in what Lord Eldon says at all to support what my learned friend is now contending for. At page 395, the Lord Chancellor says, "There are so many considerations in this Case of great importance, not only to the individuals concerned in the controversy, but to the public at large, that I should not execute my duty in stating any opinion I may at this moment entertain as final and conclusive, until after I shall have had an opportunity of reading the Bill and Answer."

Now the important point upon this part of the Case, in Lord Eldon's judgment, is in page 400: "But there is another view in which this Case should be considered, and it is this: that where an Institution exists for the purpose of religious worship, and it cannot be discovered from the Deed, declaring the Trust, what form or species of religious worship was intended, the Court can find no other means of deciding the question, than through the medium of an inquiry into what has been the usage of the congregation in respect to it." Does he say that the object is to inquire into the private and religious doctrines of the founder or contributor? He says no such thing. He says, you may inquire the usage of the congregation in respect of it; and I will, by and by, show your Lordships what were the inquiries Lord Eldon directed. It was not an inquiry into what was the will of the founder, or the will of the wife of the founder, or of the cousin of the founder, or what funeral sermon was preached when the founder was interred, or anything to lead to the private opinions of the founder,—but he directed an inquiry into the usage of this particular congregation. "If the usage turns out upon inquiry to be such as can be supported, I take it to be the duty of the Court to administer the Trust in such a manner as best to establish the usage, considering it as a matter of implicit contract between the members of that Congregation." He gets at the usage for the purpose of establishing the contract; but in Lady Hewley's Case you are not to get at the contract between the different members of the congregation, you are to find out the intention of the Foundress of the Charity. "But if, on the other hand, it turns out, (and I think that this point was settled in a case which lately came before the House of Lords, by way of appeal, out of Scotland,) that the Institution was established for the express purpose of such form of religious worship, or the teaching of such particular doctrines as the Founder has thought most conformable to the principles of the Christian religion, I do not apprehend that it is in the power of individuals, having the management of that Institution, at any time, to alter the purpose for which it was founded,—or to say to the remaining members, 'We have changed our opinions, and you who assemble in this place for the purpose of hearing the doctrines, and joining in the worship, prescribed by the Founder, shall no longer enjoy the benefit he intended for you, unless you conform to the alteration which has taken place in our opinions.' In such a case, therefore, I apprehend, considering it as settled by the authority of that I have already referred to, that where the congregation become dissentient among themselves, the nature of the original institution must alone be looked to as the guide for the decision of the Court, and that to refer to any other criterion, as to the sense of the existing majority, would be to make a new institution, which is altogether beyond the reach, and inconsistent with the duties and character, of this Court."

Now what is to be looked at? The nature of the original institution is to be looked at, and that alone is to be looked at, says Lord Eldon, to guide the decision of the Court.

Now I do not object to your Lordships looking at the original nature of the institution of this Charity; let that be your guide, and your only guide. You are not to travel into the private opinions of the Foundress. Lord Eldon goes on to say, "In this view of the case, it is of the first importance to see what the record before the Court says upon the subject of the original institution, without entering into what may be the effect of the late statute, repealing several then existing laws on the subject." Then he goes on to refer to

another branch of the case, which I will pass over for the present. Those are the principal observations he made when the case was broke; then afterwards, when he gave his judgment, there again he takes the same view of it.

Now, my Lords, I would particularly refer you to what he says at page 409. There was an indenture in this case, by which part of the benefit was conferred upon this institution, and he relies upon what is found in this indenture, and all he allows to be inquired into, beyond the indenture, is simply the usage. He says, "Several passages of this Indenture have been particularly taken notice of in the course of the discussion at the Bar; there is quite sufficient of allegation in the information to show that it was a body of Protestant Dissenters who established this Meeting-house, in order to have preached in it the religious doctrines to which they were attached, and more especially, if it cannot be said for the express purpose of inculcating the doctrines of the Trinity, yet that they were Dissenters entertaining such a class of opinions, as that the doctrine of Unitarianism would be directly at variance with their purpose in founding this Meeting-house. I observe upon this particularly, because I take it, that if land or money were given (in such a way as would be legal, notwithstanding the statutes concerning dispositions to charitable uses,) for the purpose of building a church, or a house, or otherwise for maintaining and propagating the worship of God, and if there were nothing more precise in the case, this Court would execute such a Trust, by making it a provision for maintaining and propagating the established religion of the country. It is also clearly settled that, if a fund, real or personal, be given in such a way that the purpose be clearly expressed to be that of maintaining a society of Protestant Dissenters, promoting no doctrines contrary to law, although such as may be at variance with the doctrines of the established religion, it is then the duty of this Court to carry such a trust as that into execution, and to administer it according to the intention of the founder. In this Case, it is impossible to doubt that the Trust was originally created for the purpose of maintaining a Protestant Dissenting institution; and it would be doing violence to the intention of the parties to these Deeds to say that the worship and service of God being the object expressed by them, the Trust must be administered in such a way as to maintain the religion of the Established Church. Nevertheless, I take it from the experience of many years in this Court, that if any body of persons mean to create a trust of land or money, in such a manner as to render the gift effectual, and to call upon this Court to administer it according to the intent of the foundation, whether that Trust has religion for its object or not, it is incumbent on them, in the instrument by which they endeavour to create that Trust, to let the Court know enough of the nature of the Trust, to enable the Court to execute it." From the deed, says Lord Eldon, we are to know the nature of the trust. "And therefore, where a body of Protestant Dissenters have established a Trust, without any precise definition of the object or mode of worship, I know no means the Court has of ascertaining it except"—except what?—"except by looking at what has passed, and thereby collecting what may, by fair inference, be presumed to have been the intention of the Founder. From this Deed," says Lord Eldon, "I can collect that the Founders were Protestant Dissenters, and thence presume that their object was the maintenance of Protestant Dissenting worship." He learnt it from the Deed, not from any extraneous evidence. But then says his Lordship, "I have nothing to inform me what species of doctrine this Institution was intended to maintain, except as I may be able to infer from some of the clauses of the Deed, and particularly from that clause which alludes to the possibility of the future prohibition by law of the worship thereby intended to be established, and also from that which relates to the binding effect of orders to be made by a majority of the Trustees, upon matters relating to the Meeting-house only; from which it should appear both that the founder meant to establish an institution which

was not then contrary to law, and that they did not mean to invest in the Trustees, or the major part of them, any right to vary the system or plan of doctrinal teaching which was to be maintained in this Meeting-house, according to their own discretion." Then, my Lords, he goes on to comment upon the different clauses in the deed, which was one ground of his decision. What, then, are the two grounds upon which he proceeds? There is the deed, and the usage; that is all. This is an authority, if you please, to show that where the words are so general that you cannot exactly know what is the meaning, you may resort to usage; and you can only resort to usage where the deed is silent as to the object of the institution. If the deed is sufficiently explicit, the usage is not to be considered; but if the deed is vague and general, and obscure, and there has been no solemn instrument by which the nature of the charity is defined, then you may look at the usage; but usage is the utmost extent to which extraneous evidence may be carried. This is the effect of the Attorney-General *v.* Pearson, which is supposed to be an authority to show that you are to inquire into the private opinions of the founder, and give a different interpretation to the deed, according as those opinions shall be proved one way or the other. I venture to say that the Attorney-General *v.* Pearson is no authority for such a proposition,—and no authority can be found in which such a doctrine is countenanced.

Well, if that be so, setting aside the evidence as to the private opinions of Lady Hewley, and only admitting the evidence which goes to show that by "Godly preachers of Christ's Holy Gospel," is meant Nonconformist ministers,—let us see what reason there is to say that Unitarian Dissenters may not be included.

My Lords, I deny that here there is anything vague, or uncertain, or obscure. The Deed, which it is alleged on the other side was prepared by counsel, is abundantly expressive of the intention of the Foundress. She gives the property to be distributed amongst so many poor and Godly preachers, for the time being, of Christ's Holy Gospel, according to the discretion of the Trustees, the Managers for the time being. What is the interpretation to be put upon this, looking at the intention as it appears upon the face of the Deed? I say it is this,—it is, all Dissenting ministers that, from time to time, the law will permit to receive it. It is not intended by this to violate the law; it is not intended by this, that while the Unitarian sect were declared to be guilty of an offence by preaching their doctrines, they should be sharers in the bounty; but it was a declaration that whatever sect of Christian Dissenters the law should, from time to time, tolerate, every such sect should be entitled, at the discretion of her Trustees, to share in her bounty. My Lords, even if she had been deceived in the operation of the language she had employed, that would be no reason for giving it a different construction from that which it ought naturally to bear. She has left everything to the discretion of her Trustees; she has imposed a test with regard to Almshouses, and she has imposed no test with regard to the Godly preachers who were to participate in her bounty. With respect to the selection of them, she left everything to the Trustees; and if the Trustees should select a person even that she did not anticipate, if they selected from a class coming within the class she described upon the face of the Deed, namely, the Dissenters that the law for the time being will tolerate, even if her secret intention should be defeated, that can be no reason at all for putting a different construction upon the Deed. My Lords, the limit that is to be put upon "Godly preachers of Christ's Holy Gospel," I say, is the limit which the law puts upon toleration. No sect can be included that the law forbids; but every sect is entitled to participate that the law may from time to time tolerate. My Lords, the test I would employ, the test to which I would resort, is that which is given by the 19th of George the Third, chapter 44; all Protestant Dissenting sects, the members of which can, with a good conscience, make these declarations, I say, are included:—"I, A. B., do solemnly declare in the presence of Almighty God, that I am a

Christian and a Protestant, and as such that I believe that the Scriptures of the Old and New Testament, as commonly received among Protestant churches, do contain the revealed will of God, and that I do receive the same as the rule of my doctrine and practice." This, my Lords, is considered sufficient by the legislature, and this, I say, ought to be considered sufficient by the courts of justice. Courts of justice are not to let in, are not to introduce, qualifications and conditions that the legislature considers inexpedient. There is nothing here about Trinitarian doctrine, or original sin, or the atonement; but there is a declaration, in the presence of Almighty God, that the person who makes the declaration is a Christian and a Protestant, and that he "believes that the Scriptures of the Old and New Testament, as commonly received among Protestant churches, do contain the revealed will of God, and that he does receive the same as the rule of his doctrine and practice." My Lords, that is a declaration which I believe may properly and honestly be made by any Unitarian.

My Lords, I was proceeding to another branch of the argument; I shall not find it possible to conclude to-day; it may be convenient your Lordships should now adjourn. Before your Lordships do adjourn, I am desirous to set right an inaccuracy into which I have fallen, as to the costs of the hearing before Lord Brougham. They were paid in part,—a considerable part was paid. All the Counsels' fees were paid.

(*Adjourned.*)

FRIDAY, 28th JUNE, 1839. SIXTH DAY.

Mr. ATTORNEY-GENERAL.—My Lords, at the conclusion of my argument in this Case, the last day that it was argued at your Lordships' bar, I was considering what was the proper construction to be put upon the Deed of 1704; contending before your Lordships that this, like other deeds, is to be construed by what appears upon the face of it, and contending that the construction necessarily to be put upon this Deed, with respect to the expression, "Godly preachers of Christ's Holy Gospel for the time being," is, that all Nonconformist preachers tolerated by law, at the discretion of the Trustees, in whom Lady Hewley confided, might, from time to time, be selected as the objects of her bounty; not that at that moment she meant to create a trust contrary to law, but that she meant that, as the law might alter, the Trustees might select such Nonconformist preachers as the objects of her bounty as the law from time to time should tolerate.

Now, my Lords, that this would be lawful, I fancy can admit of no doubt. The last time that the Attorney-General *v.* Pearson was argued in the Court of Chancery, the present Lord Chancellor certainly intimated a strong opinion that such a trust would be perfectly unexceptionable. Well, then, if it would be unexceptionable, and the law sanctions it, you are not to put upon a deed, upon which there is any doubt, a construction that would be contrary to law. There is no necessity for us to argue upon the supposition that Lady Hewley meant that Unitarians, while the Act of the 9th and 10th of William the Third was in force, should be participators in her bounty; but it is enough that she intended that, as the law might alter, her Trustees, in whom she placed unbounded confidence, should make a proper selection. The words in this well-prepared Deed clearly indicate such an intention, for the rents and profits are to be paid to so many "Godly preachers for the time being of Christ's Holy Gospel, and according to such distributions as the Trustees and Managers for the time being should think fit." Well then, in all time to come, this being a perpetual foundation, the Trustees for the time being were to look to see who might be considered as "Godly preachers of Christ's Holy Gospel, for the time being," and from this class make a selection.

If that be so, my Lords, I have only further to convince your Lordships that now, after the 53rd of George the Third, those who entertain what are called

generally Unitarian opinions, may be considered Christians. Are they Christians tolerated by law? If they are not tolerated by law, I admit at once that they cannot participate in this bounty; but if they are tolerated by law, then I say Unitarian ministers are to be considered as "preachers of Christ's Holy Gospel," just as much as the ministers of the Baptists, or the Presbyterians, or the Independents.

Here then, my Lords, arises a question of fearful importance, which I was little aware was to be agitated at this bar, but which has been gravely brought forward, and your Lordships are called upon, if every other defence, or if every other ground that my learned friends bring forward, should fail, to say that Unitarians are not now tolerated by law; more than that, my Lords, that they are guilty of a crime for which they may be indicted, for the only ground upon which it is contended that they are not tolerated by law is that they violate the law, that they are guilty of blasphemy, that they are liable to be prosecuted and punished. My Lords, this indeed is a question of fearful import; it affects the whole of the Unitarian body; it equally affects all Arians of whatever degree, high or low Arians, from the Homo-ousians to those who merely consider that our Saviour was in a pre-existent state, but was a created being. It is said that to deny the Divinity of our Saviour is a misdemeanour at Common Law, and that all who deny the Divinity of our Saviour are guilty of misdemeanour, and, being in constant violation of the law, that any trust in their favour would be illegal. The premises being admitted, the inference inevitably follows. Then, my Lords, is it to be said that all Arians, and all Socinians, believing in the divine mission of Christ, believing in his miracles, believing that the Scriptures of the Old and New Testaments contain the revealed will of God, believing in a state of future rewards and punishments as revealed to us in the Gospel, believing that our Saviour will return to judge the quick and the dead, and that men will be doomed to happiness or misery according to their conduct in this life; is it to be said that all these, if unhappily they doubt or dispute the doctrine of the Trinity, are liable to be prosecuted and punished? For this purpose there is no distinction between Arians and Socinians, and my learned friend Mr. Knight Bruce was at great pains to inculcate that,—because, he says, my criterion is denying the Godhead of our Saviour, which is done as much by Arians as by Socinians. Then, my Lords, what will be the consequences of this doctrine which my learned friends propound? They said that they would not enter into the argument at much length; why, my Lords, that was because they felt that they had no argument, that they had no authority whatever in their favour, and they shrunk from supporting a doctrine which they in their hearts must have felt to be untenable.

My Lords, if this be true, every Arian and Socinian minister may be indicted for every sermon that he preaches, wherein he examines the text of Scripture upon which the Trinitarian doctrine is said to rest, and wherein he puts a different interpretation upon it. More than that, my Lords, all who attend in Socinian or Arian chapels are liable to be indicted for a conspiracy against the Christian religion. More than that, my Lords, all who have attended in an Arian chapel, or in a Socinian chapel, are now liable to be indicted; there is no statute of limitations with regard to crime, and any one who has been a member of an Arian congregation, or attended an Arian chapel, thirty years ago, if this doctrine is to be supported, is liable to be indicted and found guilty of misdemeanour, fined and imprisoned. More than that, my Lords, this doctrine would lead to the invalidity of marriages celebrated in all Unitarian and Arian chapels, under the late Act of Parliament; because, if this doctrine were to succeed, those chapels are not lawfully licensed; it is a crime to frequent them, it is a crime to preach in them, it is a crime to listen to the preachers; and all the marriages that have been celebrated under the late Act of Parliament are to be considered as null and void, the parties living in concubinage, and their issue illegitimate.

My Lords, what is the foundation for such a doctrine? I at once admit, my Lords, that to deny the doctrine of the Trinity is heresy; but heresy, my

Lords, is not a crime known to the civil magistrate; it is to be punished in the Ecclesiastical Courts. While the writ *De hæretico comburendo* was in force, at least after a conviction in the Ecclesiastical Courts, the civil magistrate might be called in to enforce that sentence, and the heretic might be burnt at the stake; but in the reign of Charles II., that writ was abolished, and such proceedings are no longer lawful. Therefore, showing that this is heresy does not show that it is a crime, but, on the contrary, my Lords, your Lordships are well aware that it is laid down by all the writers upon the criminal law, that heresy is not a crime of which the civil magistrate can take cognizance. Blasphemy, my Lords, is, and very properly is, held to be such; but what is blasphemy? My Lords, blasphemy is to deny the existence of a Supreme Being; it is to deny the Christian religion; it is to revile the person of our Saviour: all these, my Lords, most properly are crimes to be punished by the civil magistrate. In a case that occurred before Lord Hale, which is mentioned in Ventris, and other cases of that sort, the words were, "reviling our Saviour," speaking of him in language that your Lordships are aware of, and which it is unnecessary that I should repeat; but, my Lords, it is laid down most expressly, that it is only reviling, talking contemptuously, contumeliously, using ribaldry and libellous expressions towards our Saviour, that can be considered as blasphemy; but merely, with decency and respect, to criticize the Scriptures, and to draw from the Scriptures any doctrine, however erroneous, may be heresy, but it is not a crime known to the Common Law of England.

My Lords, there having been some intimation that Lord Tenterden and the Judges of the King's Bench, in the trials that took place in Lord Tenterden's time, had intimated an opinion to the contrary, I have diligently referred to the books upon that subject, and I will venture to say that no such case is to be found, and that no such *dictum* is to be found. There is the case of The King *v.* Waddington, which is in the 1st Barnewall and Cresswell, page 26; and what is there decided? "A publication stating Jesus Christ to be" (I am obliged, my Lords, with pain and horror, to read the words,) "an impostor and a murderer, is a libel at Common Law." Now during this trial, a question was asked by a juryman of the Lord Chief Justice, whether a work that denied the divinity of our Saviour was a libel? Now, does Chief Justice Tenterden say, Ay? Quite the contrary: "The Lord Chief Justice answered, that a work speaking of Jesus Christ in the language used in the publication in question, was a libel." Your Lordships have heard what that language was. And then, my Lords, when this question came on to be discussed *in Banco*, upon a motion for a new trial, the Lord Chief Justice says, "I told the jury that any publication in which our Saviour was spoken of in the language used in the publication for which the defendant was prosecuted, was a libel. I have no doubt whatever that it is a libel to publish that our Saviour was an impostor and a murderer in principle." Mr. Justice Bayley says, "It appears to me that the direction of my Lord Chief Justice was perfectly right. The 53rd George III. c. 160, removes the penalties imposed by certain statutes referred to in the Act, and leaves the Common Law as it stood before. There cannot be any doubt that a work, which does not merely deny the Godhead of Jesus Christ, but which states him to be an impostor and a murderer in principle, was at Common Law, and still is, a libel." Mr. Justice Holroyd says, "I have no doubt whatever that any publication in which our Saviour is spoken of in the language used in the work which was the subject of this prosecution, is a libel. The direction of the Lord Chief Justice was, therefore, right in point of law; and there is no ground for a new trial." My Lords, the language in which our Saviour Christ is talked of by the Unitarians, is ever that of respect and reverence, and gratitude and piety.

Now, with regard to the King *v.* Carlile, which is reported in 3rd Barnewall and Alderson, page 161, that was an indictment for blasphemy, and there was a motion in arrest of judgment, upon the ground that since the 9th

and 10th of William III. was repealed, such an indictment could not be supported. Now what says the Lord Chief Justice there? "I consider it to be perfectly clear that the 9th and 10th of William III. chap. 32, did not take away the Common Law punishment for this offence:" (and I say, God forbid that it should:) "its title is 'an Act for the more effectual suppressing of Blasphemy and Profaneness,' and the preamble recites the object to be 'for the more effectual suppressing of the said detestable crimes.' And for this purpose it imposes certain disabilities on persons convicted, which are of a very high and severe nature. But it appears to me that the legislature intended, not to repeal the Common Law on this subject, but to introduce certain peculiar disabilities as cumulative upon the penalties previously inflicted by the Common Law. The very severe nature of these disabilities might well induce them to introduce provisions of the nature contained in the second and third sections of the Act. Now I take it to be a general rule—." Then he goes to show that this did not alter the Common Law, which rendered, and most properly rendered, blasphemy an indictable offence. My Lords, Mr. Justice Bayley and Mr. Justice Holroyd and Mr. Justice Best followed in the same strain, but without intimating any opinion, for which there would have been no foundation, that merely with respect and reverence to moot any question of controverted divinity was an indictable offence.

Where then is the authority for it, my Lords? I have looked into Hale, I have looked into Hawkins, I have looked into East, I have looked into Blackstone, I have searched the Reports; I can find nothing in any text writer, I can find no decided case in the slightest degree to countenance such a doctrine. Lord Eldon, in the Attorney-General *v.* Pearson, says that he has an opinion, without intimating that opinion. If that great judge had intimated an opinion, ever so strong, that it is an indictable offence to profess Unitarian doctrines, my Lords, I should have said that that opinion was entitled to no regard whatsoever against the multiplied authorities that teach the contrary doctrine; one would only lament that so great a judge should have his mind clouded and obscured upon a particular subject,—and, with all the reverence with which we must regard his memory, if he had such an opinion, he cannot be supposed to have escaped the reproach of bigotry.

But, my Lords, what are the opinions on the other side? I have the opinion of Lord Brougham, clear and decisive. My Lords, these Defendants were expressly questioned respecting whether they did not believe and teach Unitarian doctrines. Here is one of the interrogatories administered to Mr. Wellbeloved, "Whether or not the doctrines of Unitarianism, or of Unitarian Christianity, are preached by him, the said Reverend Charles Wellbeloved, in the Saint Saviour Gate chapel at York?" He is interrogated whether he does not preach Unitarian doctrines. My Lords, Mr. Wellbeloved had in reality no hesitation in stating what his belief was; but it was thought a dangerous precedent and perilous to conscience and religious liberty to be put to answer such an interrogatory, and he therefore demurred, and the question was argued before Lord Brougham, whether he was bound to answer such a question? and Lord Brougham solemnly decided that he was bound to answer the question; the exception was overruled and he was compelled to answer. Is not that a decision, my Lords, that to entertain, ay and to preach, Unitarian doctrines is not a crime? Would Lord Brougham have called upon Mr. Wellbeloved to acknowledge that he was guilty of a misdemeanour, to furnish evidence upon which he might have been indicted and convicted and punished? My Lords, that is a clear and solemn determination that such preaching, now that the 53rd of George III. has come and repealed the 9th and 10th of William III., is not contrary to law.

Well but, my Lords, upon the former day, (and if the opinion of one man is cited, the opinions of others may be cited,) in answer to inquiries which your Lordships and the Judges then made, we produced at your Lordship's bar bills which passed the House of Commons; they are not thereby law, but their

passing the House of Commons gives strong evidence of what the law was considered to be: and in those bills that did pass the House of Commons and were sent up to your Lordships' House, it is recited that "it is expedient to make provision for the marriage of the members of certain congregations of Protestant Dissenters, usually assembling for divine worship in certain chapels or places duly entered and registered according to law;"—here, as far as that goes, is a recognition that their places of worship are duly entered and registered according to law;—"who deny the doctrine of the Holy Trinity as it is declared in the Articles of Religion mentioned in the Statute made in the 13th of the reign of Queen Elizabeth. It is therefore enacted, that at any time after the passing of this Act, whenever the banns of marriage shall have been duly published three several Sundays, in the manner herein prescribed, between members of any such congregation as aforesaid:"—those who unfortunately deny the doctrine of the Trinity, who shall be desirous of having the benefit of the Act, without any just cause or impediment having been declared against such marriage, it is lawful that they shall be married in the particular form herein specified; and they are throughout the bill considered as Christians, tolerated by law as Christians, and entitled to the protection of the law of the land.

Now, my Lords, these bills came up to your Lordships' House, and they did not pass this House; but I will give your Lordships some testimonies, deserving of the greatest respect, in favour of this sect of Christians called Unitarians, that are now denounced as blasphemers who ought not to be endured, but ought to be imprisoned and fined and exterminated. My Lords, that bill was supported by the then Lord High Chancellor of Great Britain, whom I am sorry not now to see in his place in this House: his absence gives me an opportunity of saying, that to the opinions of no judge who has sat upon the Woolsack is greater respect or deference due; and, my Lords, if there had been any doubt about Unitarians being tolerated by Law, the Lord High Chancellor's opinion would have removed that doubt.

LORD CHANCELLOR.—What year was this?

Mr. ATTORNEY-GENERAL.—The year 1827, my Lord, when Lord Lyndhurst was Lord High Chancellor of Great Britain; and I am sure, my Lords, that if there had been any doubt respecting the legality of the Unitarian chapels, he would eagerly have stood forth in defence of the law and the religion of the country; he would have known the duty that belonged to his office, and the Keeper of the King's Conscience most undoubtedly would have been the first to denounce this transgression of the law. But, my Lords, what does he say upon this subject? Your Lordships will find a very accurate account of the opinion of Lord Lyndhurst in the 17th volume of Hansard's Parliamentary Debates, page 1420; I will use the freedom of reading a part of it; he strongly supports that Bill in which they are stated to be Christians, and meritorious persons and deserving of public protection: he says, "The Quakers had been excepted from the operation of the Marriage Act, and their marriages stood on the same footing as marriages did before the passing of that Act,"—that is, before the passing of Lord Hardwicke's Act,—"and if the Unitarians had then existed in the same way as they now exist, would they not also have been excepted? The principle of the exemption was, that this was a matter of conscience, and that to force the Quakers to go through the ceremony, as appointed by this Act, would be a profanation of the rites of the Church of England; and upon the same principle the Unitarians should be exempted. A right reverend Prelate had said that it was a solemn mockery, or something to that effect, to make the Unitarians perform the marriage ceremony according to the rites of the Church of England; and would they not then have been exempted from the Marriage Act if they had existed in a legal form as they do now? They had not at the time of passing the Marriage Act a legal existence, since by a statute of King William they were subjected to penalties, and in nine years after addititional penalties were enacted against

them; and thus matters stood with respect to them at the passing of the Marriage Act, and they were not exempted, as they were marked out by law as objects of punishment. But in the 19th of the late King, the laws against them had been repealed to a certain extent, and in 1813 they were entirely exempted from the penalties. They ought now, therefore, to have the benefit of exemption from the Marriage Act, since that would be quite in the spirit of that Act. As to the principles of this sect, it was said that they were Christians, believing in the New Testament, but not drawing the same conclusions as we do from a part of the New Testament. They did not object to the ceremony of baptism, in the name of the Father, the Son, and the Holy Ghost, nor did they object to these words in the marriage ceremony, but they did object to the blessing in the name of God the Father, God the Son, and God the Holy Ghost; that with them was no trifling objection, but one which went to the very essence of their faith; it was the point on which their faith turned. It had been said that they were not called upon to repeat those words; but then they were present when they were pronounced, and were supposed to assent to them, and they could not protest against them without being guilty of an infraction of the law. This solemn mockery ought to be got rid of, for the sake both of Dissenters and of the Church. Now he thought the bill could be properly defended upon the principle of a law now in existence; he meant the Marriage Act. Since the year 1813, when by Act of Parliament the Unitarian Dissenters became a tolerated body and were exempted from penalties to which they had before been liable, they might be considered as forming a new class in the country. He was of opinion that their Lordships were bound to follow up the principle of that bill, which they might now do in a very necessary and important point, by going into a committee on the bill under consideration." Therefore, my Lords, you have here the opinion of that noble and learned Judge, in the most express terms, that since the year 1813 Unitarians are tolerated, and that they are in the same position with any others dissenting from the Church of England.

My Lords, there spoke in the same debate a right reverend Prelate, a great ornament of the Church, whose character cannot be too much reverenced, I mean the present Bishop of London, then Bishop of Chester, who was present during the early part of this discussion, and whose absence now I very much lament: "The Bishop of Chester said he felt himself bound to offer a few words in support of the bill, in conformity with the pledge he had given. He agreed with the learned Earl opposite, that some alterations were necessary; but he thought with the learned Lord on the Woolsack, that those alterations could be easily made in the committee. He would not go at length into the details of the bill; but he thought their Lordships would do wisely to acknowledge its principle, by which they would give satisfaction to a numerous body of Dissenters, by showing them that the legislature was ready to afford them all the assistance compatible with the integrity of the Church and with the safety of the constitution. The marriage ceremony was the only portion of the service of the Church of England to which it was compulsory on every person to conform." That right reverend Prelate voted for going into a committee upon this bill, containing the preamble and the enactments which I have stated to your Lordships.

My Lords, there was a division upon that occasion; the House divided, for going into the committee, 61, against it, 54: there was therefore a majority of seven in your Lordships' House for going into the committee upon this bill,—and shall I now be told in the year 1839, that all that this bill recites is false, that those Dissenters are not Christians, that they are blasphemers, that they are not, and ought not to be, tolerated by the law of the land?

My Lords, that bill did not pass, because it was so late in the session; and that is stated by several of the noble Lords who then took part in the discussion; and the noble and learned Lord who then held the Great Seal intimated that, though it might not pass in that session, which was so late, it would be

important to affirm the principle of the bill, so that it might be taken up at an early period. The principle of the bill was so far affirmed that it was read a second time, and there was a majority of the House for going into a committee on the bill.

My Lords, from various political causes that bill was not revived in the ensuing session; but in principle it was revived and passed, and is now the law of the land, by the Dissenters' Marriage Bill, which applies to all sects of Christians,—to the Unitarians and Arians just as much as to the Baptists, or to the Independents, or Presbyterians. Was it not, my Lords, when the 53rd of George III. passed, the intention of the legislature,—is it not matter of history that it was the intention of the legislature,—to place the Unitarians upon the same footing with other classes of Dissenters? Would Mr. William Smith have been satisfied, would those whom he represented have been satisfied, with a mere abolition of the penalties contained in the 9th and 10th of William III., if they had been still liable to be indicted and to be punished? My Lords, it was, I will take upon myself to say, the universal understanding that after the 53rd of George III. had passed, they were to be considered as tolerated as much as any other Dissenters. Then, my Lords, was it not clearly the intention of the Dissenters' Marriage Bill to include all whose places of religious worship were duly registered: and that bill having passed by large majorities in both houses of parliament, and it having been clearly the understanding that Unitarians were comprehended in that bill, are the Unitarians now to be told that they are to be excluded from the benefit of the bill, that their places of religious worship are indictable, and that they themselves are not to be tolerated as Christians? My Lords, I do express great surprise and alarm at such a doctrine being brought forward by the Relators in this Case, by those whose sentiments are spoken by my learned friend Mr. Knight Bruce, namely, the Independents. I am sure, my Lords, that the prelates of the Church of England would express no such sentiments, that the members of the Church of England in general would express no such sentiments, and that they are only the sentiments of those Independents who wish to grasp at the whole of the property of Lady Hewley.

Well, then, my Lords, setting aside this objection, which I hope is entirely without foundation, that Unitarians are not to be considered as now tolerated by law, is there anything in that Deed of 1704 by which they are now to be considered as excluded? I say that they do now come within the definition of Nonconformist Dissenters from the Church of England, but professing the Christian religion. It is very strange that my learned friend Mr. Knight Bruce should now represent that Unitarians are not Christians, when your Lordships are aware that this very Information against them does state that they are Christians professing Unitarian doctrines; and it would be very strange indeed, my Lords, if they were not to be considered as Christians, when down to the present time they have formed one of the three great denominations of Dissenters—they have been recognised as such—their addresses have been received upon the throne. It was by one of this body that the address was presented upon the accession of George IV.; it was by another that the address was presented upon the accession of William IV.: they have been therefore recognised by the crown as well as by both houses of parliament. That being so, my Lords, I say that the Unitarians are just as much entitled, as Preachers of Christ's Holy Gospel, to be selected by the Trustees in their discretion, as any other denomination of Christians.

Now, my Lords, let me come to the Deed of 1707. My learned friend Mr. Kindersley said, and I think said truly, that you are to look at the Deed of 1704 by itself. Very well, let it be so; I have treated it by itself: there is nothing in that Deed to exclude Unitarians, Unitarians being tolerated by law. Then is there anything in the Deed of 1707? My Lords, that merely provides for the Almshouse, and directs that the surplus of the funds shall be paid to the Trustees appointed by the Deed of 1704. Upon the face of the Deed, therefore,

there is nothing whatsoever, even if it were taken in conjunction with the Deed of 1704, to exclude Unitarians. But then there are the Rules and Regulations which Lady Hewley has prescribed for the management of the Almshouse, and I do not dispute for a moment that those are properly to be looked to; whatever is written or done respecting the foundation of this Charity, may properly be examined to find out the will of the Foundress; therefore the directions which are given by her for the management of the Almshouse are very properly in evidence, and very properly ought to form an ingredient in your Lordships' judgment; very different are they from the admitting in evidence the will of Sir John Hewley, or the will of Lady Hewley, or the funeral sermon upon the interment of Lady Hewley, for the purpose of finding out what were her secret opinions, and thereby to put a different construction upon her Deeds from that which would otherwise have been given, if upon such inquiry her private opinions should turn out to be different.

Now the Deed of 1707 is entirely silent upon this point; there is nothing in the Deed itself which can in the slightest degree limit the operation of the Deed of 1704; there are directions,—what are those directions?—That the Almswomen shall repeat, or be able to repeat, the Lord's Prayer, the Creed, the Ten Commandments, and Edward Bowles's Catechism; and I at once admit that it was intended that the Almswomen should not only be able to repeat, but piously to repeat, all those sacred documents, and should steadfastly believe all that is therein inculcated. But, my Lords, if the doctrine of the Trinity were taught in the strongest terms in the standards to which Lady Hewley refers, with reference to the Almswomen, I should say that no Almswoman should be admitted who was not a strict Trinitarian, and that it would be a breach of trust to admit an Arian any more than a Socinian. But there we must stop, my Lords, because those directions are expressly confined to the management of the Almshouse; they do not apply to any other of the five classes of Lady Hewley's bounty, they do not apply to the godly preachers,—or the widows of godly preachers,—or the congregations,—or those who were to receive eleemosynary relief:—is it only the Almswomen that were to repeat the Lord's Prayer, the Creed, the Ten Commandments, and Edward Bowles's Catechism; and therefore, unless you reason in this manner, we get at the private belief of Lady Hewley, by means of those directions; and then, having got at her private belief, say, we will put a different construction upon the Deed of 1704 from that which we should have put had her private belief been different. But those directions respecting the Almswomen can have no application whatever to any other of the branches of the Charity, and it is therefore, my Lords, for the purposes of this Decree, really very immaterial, as I humbly apprehend, to consider what doctrines are taught by those tests which she applies with respect to the Almshouse.

But, however, it would not become me entirely to dismiss that branch of the subject with that single observation, and I will shortly advert to what was urged upon it by my learned friend Mr. Kindersley. He insists that these tests are clearly Trinitarian, and that being Trinitarian they are to have an application to every branch of the Charity. Well, now, my learned friend Mr. Kindersley, to my utter surprise, said that he thought that Lady Hewley in those directions, when she talks of the Creed, might mean the Confession of Faith. Now from my earliest infancy I have heard of the Confession of Faith, and I have heard of the Creed, but till now I never heard of their being confounded together. The Confession of Faith was framed by the Assembly of Divines that met at Westminster in the years 1643 and 1644; it is a long, elaborate, comprehensive body of Calvinistic divinity; it is now adopted as the great standard of the Church of Scotland, along with the other productions of the Assembly of Divines, the Larger Catechism and the Shorter Catechism; but was it ever called a creed? Did Lady Hewley really mean that these Almswomen should be able to say by heart the Confession of Faith? My Lords, I should doubt very much whether she would have been able herself to find objects for her bounty who

submit to such a test. I think it would be a hard matter for my learned
Mr. Kindersley himself, to learn the Confession of Faith, and to be able
it by heart. The Shorter Catechism, my Lords, I learned myself when I
f very tender years; I have read the Confession of Faith, but as to saying
heart, it has always been greatly beyond my power. But was it ever
the Creed? Why, my Lords, what do we understand by the Creed?
postles' Creed; and see its juxta-position; they are to repeat the Lord's
r, the Creed, and the Ten Commandments. Why, what is called the
l? It is the Apostles' Creed, which is considered so sacred as almost to
oked upon as part of the text of Scripture itself. There is no foundation
fore, my Lords, for saying that it was the Confession of Faith (in which,
undoubtedly, I do not dispute that the doctrine of the Trinity is taught in
ss terms,) to which allusion is made in these directions. Now, my Lords,
postles' Creed has been part of the service in the Unitarian chapels; the
rians put their construction upon it, but they have no objection whatever
eat it. There are one or two expressions in the Apostles' Creed to which
have objections, which have not the remotest connexion with the doctrine
Trinity: instead of "he descended into hell," they read, "he descended
he grave;" and I believe they omit entirely "the communion of Saints."
my Lords, every other part of the Apostles' Creed they receive, and your
ship sees that those parts to which I refer have no connexion whatever
the doctrine of the Trinity. Well then, my Lords, of course the Unita-
have no objection to repeat the Lord's Prayer or the Ten Commandments
nore than the Apostles' Creed. Edward Bowles's Catechism they must
t to, because although I humbly apprehend that the doctrine of the
y is not taught there, and Lady Hewley preferring it to the Shorter Cate-
affords an inference that she was an Arian rather than a Trinitarian,
can be no doubt, as I apprehend, that Edward Bowles's Catechism does
in the doctrine of Original Sin and of the Atonement; those are doc-
to which the Unitarians object; but the question still remains, is this a
arian catechism?

w, my Lords, it is a well-known fact, and not disputed, that in 1704 and
among the Presbyterians, the Shorter Catechism of the Church of Scot-
which is now one of the standards of the Church of Scotland, which was
d by the divines assembled at Westminster in 1644, was used among
nters, and was generally taught to their children, as it is now taught to
ildren of all the members of the Church of Scotland. In the very cere-
of baptism, as now performed in Scotland, the sponsor is obliged to
e himself that he will teach the infant that is baptized the Shorter and the
r Catechism; it was so among the Presbyterians of Lady Hewley's time;
why does she prefer Edward Bowles's Catechism, in which there is no
question as that to be found in the Shorter Catechism of the Assembly of
es, "How many persons are there in the Godhead?" to which an answer
en teaching the true Trinitarian doctrine, admitting of no doubt and no
uity. My Lords, I suggest to your Lordships that the only reason why
an be supposed to have preferred Edward Bowles's Catechism is, that that
onsistent with the Arian doctrine, it being well known that in her time
rian doctrine had made a considerable progress among Presbyterians.

t, my Lords, it has been suggested that although in Edward Bowles's
hism the doctrine of the Trinity is not expressly taught, there are refer-
to certain texts of Scripture which clearly show that this was the belief
dy Hewley. My Lords, at page 135 of our Appendix, there is an entire
of Bowles's Catechism, and it is said that there are certain texts referred
the margin, which clearly inculcate the doctrine of the Trinity. But, my
, those texts, according to the Unitarians, are reconcilable with their no-
upon that great and mysterious subject. But it is a remarkable thing, my
, that in that very answer which refers to Galatians iv. 4. and 1 Timothy
6., and where it is said that there is that controversy about the Θ;

and the Θεός, in the text of the Catechism itself the language of the translation is not followed; for, my Lords, in answer to the question "What is Jesus Christ?" it is not, my Lords, "God made manifest in the flesh;" it is, "The Son of God made manifest in the flesh." Therefore, my Lords, while those texts are referred to, those texts are not followed, and an answer is given which is perfectly consistent with the Arian doctrine. The very reference, therefore, to this text, seems to me to afford a strong argument that it was an Arian interpretation that was intended to be put upon it. But, says my learned friend, this is matter of science, and your Lordships are bound to take the opinions of men of science upon it, as if it were some technical question about some trade or branch of commerce. My Lords, I humbly apprehend that this is a question upon which your Lordships, as scholars and as Christians, are quite as competent to judge as Dr. Pye Smith or any of those who have been examined; that your Lordships, perhaps, are better qualified, for as Lord Brougham, when this case was before him, observed, "Professional men come with a predisposition; they have made up their minds, and that which they believe, they think that they shall find in any document that is submitted to them;" and from that predisposition and prebelief, the expression of one of the witnesses may be accounted for, that this catechism, which is entirely silent respecting the doctrine of the Trinity and which, in answer to the question "What is Jesus Christ?" contains the answer, "The Son of God manifest in the flesh,"—that this catechism is "racy with Trinitarianism." It was observed by my learned friends, that whatever criticism there may be about the Θς and Θεός, Lady Hewley probably was not a great Greek scholar; then I do not suppose that she ever read Leibnitz or Calovius, who are cited as authorities with respect to her opinions and the interpretation to be put upon her Deeds; but although she may not have read Leibnitz, or Calovius, or Schleusner, or Greisbach, which she could not of course have read, being modern critics, she had read Timothy and the Galatians, she knew what was the authorized version of those texts, and she adopts a catechism that does not contain those texts, but which, referring to those texts, adopts language admitting of a totally different interpretation.

But, my Lords, supposing that this Catechism taught the doctrine of the Trinity in the most express terms, I submit to your Lordships, that it has no effect whatsoever, excepting as far as the Almshouse is concerned; it was for the regulation of the Almshouse, and it ought to regulate the Almshouse; but does she say, my Lords, that the godly preachers who are to share her bounty shall repeat Edward Bowles's Catechism? Does she say that the widows shall repeat Edward Bowles's Catechism? Does she say that the godly persons in distress shall repeat Edward Bowles's Catechism? She says no such thing. Therefore, my Lords, this shows that she knew how to affix the test; she affixes it to one class of those who are to share her bounty, but she does not extend it to any other; and the reason has been already suggested, and it is quite obvious, when she was getting a number of persons to live together, it was very material that, before they were admitted into this household, where they were to form one family, they should be of one faith, and that for that reason they should submit to the test that was imposed upon them; but she applies it to no other class that were to share her bounty.

My Lord, it might just as well be said, if by the Deed of 1704 or the Deed of 1707 she had established an infirmary, if that had been the seventh object of her bounty, that no patient should be admitted into the infirmary who could not repeat Edward Bowles's Catechism; the classes are just as distinct between the almswomen and the preachers of the Gospel, as between the preachers of the Gospel and patients suffering under an ague or fever.

Well then, my Lords, what is there in the slightest degree to show that she limits the class to whom her bounty was to be extended by the Deed of 1704? There is nothing in the Deed of 1707, there is nothing in these regulations, which were exclusively for the management of the Almshouse; the Deed of

1704 stands, therefore without qualification or controul, liable to the just interpretation of that Deed: the Unitarians, as tolerated Christians, are to be included.

My Lords, my learned friend Mr. Knight Bruce complained very much that we did not read the evidence. I really thought, my Lords, that the facts between us had been admitted, and that it was unnecessary to occupy your Lordships' time by going over facts that were not at all in dispute; and I do not see how my learned friend has at all elucidated the case, or rendered any assistance to your Lordships, by going over a great deal of the evidence to show what never has been in dispute,—to show that those Trustees who are Unitarians do not believe the doctrine of the Trinity, do not believe Original Sin, do not believe the Atonement. It was quite unnecessary for my learned friend to occupy a considerable portion of the time that he devoted to that purpose, with reading evidence of facts that are not at all in dispute. A certain number of Trustees are Unitarians, and of 237 congregations to which assistance is given, thirty-eight are Unitarian; that never has been disputed.

Well but, then, a heavy charge is brought against Mr. Wellbeloved, because in his answer he passes over certain passages of Scripture. My Lords, according to my learned friends, he ought to have included in his answer the whole of the Scriptures of the Old and New Testament; he might have said, (I hope I may make that observation without irreverence,) "My belief is in the Schedule hereto annexed," and have added the Old and New Testament as an exhibit to his answer. This seems to be what my learned friend contends for, —that if he omits any part of Scripture, you are to suppose that he does not believe that part which he omits. But, my Lords, what does he say in his answer? He says, "that he uniformly represents himself, and desires to be considered by others, as a Protestant Dissenter of the Presbyterian denomination, and as one who firmly believes in the divine mission of Jesus Christ, and holds no other doctrines than those contained in Christ's holy Gospel, to all of which"—that is, to all which doctrines—"this defendant yields a full and cordial assent. However, he admits it to be true, that in the sense in which this defendant uses the term Unitarian, and which is hereinafter set forth, he is a Unitarian in his religious belief and doctrines. That in using the term Unitarian, as applicable to himself, he means more specifically to denote that he believes and professes the following Christian doctrines."—Then he goes on and enumerates the doctrines in which he believes:—"That to know God to be the true God, and Jesus the Christ whom he hath sent, is eternal life;"—and then, after enumerating those doctrines, he concludes with words which I think my learned friend did not bring under your Lordships' notice,—"That to the before-mentioned doctrines of Christ and his apostles, this defendant gives his unqualified assent, and that whatever is taught in Christ's holy Gospel concerning the existence, perfections, and government of God, the person and the office of Christ, the terms of pardon and acceptance with God, the duties of life, and a future state of righteous retribution, this defendant gratefully and cordially receives and professes as divine truth."

This, my Lord, is the answer of Mr. Wellbeloved. Is not this consistent with that confession of faith contained in the 19th of George III.? The legislature, by the 19th of George III. and subsequent Acts of Parliament, has tolerated all Christians who can make the confession of faith therein specified: now, my Lord, does not Mr. Wellbeloved's answer fully correspond with that declaration which the legislature requires? My Lords, all that the legislature requires is this,—"I do solemnly declare in the presence of Almighty God that I am a Christian and a Protestant, and as such that I believe that the Scriptures of the Old and New Testament, as commonly received among Protestant Churches, do contain the revealed Will of God, and that I do receive the same as the rule of my doctrine and practice." My Lords, is not the confession of faith by Mr. Wellbeloved, in his answer, fully as extensive and comprehensive and satisfactory as the confession of faith as a Christian which the legislature

requires? After enumerating his belief in the divine mission, in the miracles of our Saviour, and in the doctrine which he teaches, he concludes with this declaration,—"That whatever is taught in Christ's holy Gospel concerning the existence, perfections, and government of God, the person and the office of Christ, the terms of pardon and acceptance with God, the duties of life, and a future state of righteous retribution, this defendant gratefully and cordially receives and professes as divine truth."

My Lords, my learned friend brought forward a great number of quotations which I will at once acknowledge might have been multiplied very much if he had thought fit, intimating that in the opinion of those who wrote the books quoted, Socinians were not to be considered as Christians. My Lords, texts from different authors might have been found stronger than those which my learned friend relied upon, intimating that they ought not to be endured, that they ought to be cut off from the land of the living, that they should be burnt at the stake: but what does that prove, my Lords? that there has been religious intolerance, that there has been religious bigotry, that there have been individuals who have looked with great abhorrence upon Unitarians, and upon other persons who dissent from the orthodox faith. My learned friend, I think, acknowledged that Roman Catholics were Christians, and I was pleased to hear him acknowledge that the Presbyterian Church of Scotland may be considered Christian; but he might have got plenty of quotations denying that Papists are to be endured; he might have got innumerable quotations to show that they are not Christians, that Rome is the Whore of Babylon, that the Pope is not a Christian but Antichrist, and that all Papists should be burnt at the stake. There would have been no difficulty in doing that, if the question had been whether Roman Catholics are Christians? But more than that,—if the question had been, whether Scotch Presbyterians were Christians, I could supply him with plenty of authorities denouncing them as infidels, as no Christians. In Scotland, according to the Church of Scotland, there are no bishops, there is not that chain from the apostles downwards through bishops which Episcopalians consider as indispensable; the Presbyterians suppose that presbyter and episcopos meant and mean the same, and that they derive their priesthood directly from the apostles just as much as the Church of England. But, my Lords, that is denied by good Episcopalians; the Church of Scotland is not considered by many of them as a Christian church; by a late writer of great talent, most amiable manners and high respectability, it is considered a great blot upon the reign of William III., that the Presbyterian religion was tolerated in Scotland.

It therefore comes to nothing, my Lord, to bring forward quotations from authors, denouncing particular sects as not being worthy to be considered as Christians. I will, therefore, make no particular remark upon any of his quotations, except that which I think might well have been spared,—I mean the supposed address of the Socinians to the Plenipotentiary of the Emperor of Morocco. My learned friend Mr. Kindersley, I think it was said, had the merit of discovering this one day when he was reading an old book at breakfast. Why, my Lord, it is a known calumny, which has been brought forward against the Socinians for nearly 150 years, which has been refuted, and which is now revived by the Relators, the Independents.

My Lords, if your Lordships attended to the manner in which that quotation is introduced into Leslie, you might see that it bore internal evidence of being something in the nature of a *jeu d'esprit*; it is introduced for the purpose of proving that really there is no distinction between Mahomedans and Socinians, that they are ready to coalesce, and that their doctrine rests very much upon the same foundation, Now, my Lords, in a book published in the year 1813, *ante litem motam*, before this Information was filed, there is an account of this supposed address.—(My Lords, I would just by way of parenthesis beg permission to observe, that my learned friend complained very much of the Blue Book, and that it contains *per incuriam* a few observations: but what is

his analogous book? It is a controversial pamphlet published *pendente lite*, with a view to Lady Hewley's case, by a learned gentleman of the name of Wilson; and that is the book corresponding with our Blue Book, and it is to that that my learned friend Mr. Knight Bruce has very frequently referred.)—Now, my Lords, in the book that was published in the year 1813, by Robert Aspland, he says, "You refer in proof of the harmony between Socinians and Mahomedans, to the Socinian epistle to Ameth Ben Ameth, Ambassador from the Emperor of Morocco to Charles the II., which is to be found, as you state, in Leslie's works, and the original (or reputed original) of which is still, I know, among the Manuscripts in the Lambeth Library. This epistle which, if genuine, would prove nothing but that there have been weak and foolish Unitarians, has been pompously cited by Horsley and Whitaker, as well as by yourself;"—this therefore is not the discovery of my learned friend Mr. Kindersley;—"but though it is in existence in manuscript, as well as in 'Leslie's Socinian Controversy,' and though I have no doubt of its having been presented to Dr. Tenison by Sir Charles Cotterell, to whom it was given by a Monsieur Verze, according to Tenison's attestation to the manuscript, I yet strongly suspect it to be a forgery, and to have been the work of Leslie himself. I will lay before you the grounds of my suspicion:—First, there is internal evidence of its being written in the way of banter. Second, no subscription appears to it, and no person is named as concerned in it, but the before-mentioned Frenchman, who might be employed as an agent, and yet not be a Socinian agent. Third, it is not credible that such a letter should have been presented by real Unitarians to the Moor in public, as the story goes, and that when refused by him it should have been given up to the master of the ceremonies. Fourth, if it had been intended to address the Moroccan Ambassador, would a letter have been written to him in English, and not rather in Latin or French, then the universal languages, the latter the language of courts and the native tongue, it is presumed, of the active and useful Monsieur Verze? Fifth, it is not likely that such a document should have slept quietly in the hands of Churchmen for so long a space as thirty years or thereabouts, which was the interval between its alleged presentation and its publication, during which period the Unitarian controversy was busily agitated; 'the disgraceful fact' would then have been as valuable, at least, to the opponents of the Socinians, as it is now, and could scarcely have been kept back, if known by the Horsleys and Whitakers of the day and their humble admirers and copyists. Sixth, it is not a little curious that Leslie, in giving this epistle to the world for the first time, should say nothing of its history, nothing of the persons in whose name it was written and by whom it was presented, nothing of the means by which it came into his hands, but should content himself with stating, 'I will here present the reader with a rarity, which I take to be so because of the difficulty I had to obtain it.'" (Those were the words of Leslie which were read by my learned friend Mr. Knight Bruce.) "But, seventhly, it is in my mind decisive of the question, that immediately after Leslie had published the epistle, Emlyn, who answered the tract to which it was prefixed, stated it as his belief upon inquiry, that no such epistle had ever been presented by any one deputed from the Unitarians, and insinuated that no credit was to be given to a document published by Leslie unless vouched by some other authority than his own; and that Leslie in replying to this answer, though he dwells for pages upon the passages before and after this relating to the epistle, says not a syllable about his 'rarity,' or in defence of his veracity." Therefore it appears that, as soon as it came out, it was denounced by Emlyn as a forgery, and that Leslie acquiesced in that charge.

My Lord, this Leslie was a general maligner; he attacked among others Archbishop Tillotson; he represented that Archbishop Tillotson was a Socinian, and he produced a number of quotations from his sermons, put into the mouth of a supposed Socinian, holding a dialogue in defence of the doctrines of

Socinians. My Lord, in Birch's Life of Archbishop Tillotson, this is stated, "But how little soever the Archbishop was thought by the Socinians themselves a friend to their notions, and though they published an answer to his Four Sermons against them, yet these very sermons were urged by his enemies to support the imputation of Socinianism with which he had been loaded. For in 1695, there was published in 4to, said to be printed at Edinburgh, a piece entitled 'The charge of Socinianism against Dr. Tillotson considered, in examination of some sermons he has lately published on purpose to clear himself from that imputation, by way of dialogue between F., a friend of Dr. T.'s, and C. a Catholic Christian; to which is added, some Reflections upon the second of Dr. Burnet's Four Discourses concerning the Divinity and Death of Christ printed in 1694; to which is likewise annexed a supplement upon occasion of a history of religion lately published, supposed to be wrote by Sir R. H——d, wherein Charles Blount's 'Great Diana' is considered, and both compared with Dr. Tillotson's Sermons, by a true son of the Church." The whole performance, which the writer declares in his preface to have been written before the Archbishop's death, is written in a style of invective and scurrility, as unsuitable to the discussion of a question of religion as to the character of the person against whom it is leveled. It asserts that his Grace's Sermons are all the genuine effects of Hobbism, which loosens the notions of religion, takes from it all that is spiritual, ridicules whatever is called supernatural; it reduces God to matter, and religion to nature. "In this school, Dr. T. has for many years held the first form, and now diffuses his poison from a high station. His politics are Leviathan, and his religion is Latitudinarian, which is, none,—that is, nothing that is positive, but against every thing that is positive in other religions, whereby to reduce all religions to an uncertainty and determinable only by the civil power." And then there is a long invective quoted against Archbishop Tillotson; but, my Lord, afterwards Birch goes on to say, that the real author of the charge, "though it purports to be printed at Edinburgh," was never in Scotland, though in the title-page it is pretended to have been printed at Edinburgh: and indeed it is now known to have been the production of that voluminous polemical writer, Mr. Charles Leslie, a man of some learning and wit, but accompanied with a vein of scurrility which must render his writings in general disgustful to the present age and posterity, however applauded in his own time and by his own party." Then, my Lords, I have got here the work of Emlyn, (I will not detain your Lordships by referring to it more particularly,) in which he denounces this supposed address as a forgery, and he attacks Mr. Leslie for the manner in which he conducted this and other controversies: this book of Emlyn's was published in the year 1708; so early as that had this been denounced as a forgery. My Lord, we have had something about "raking into a dunghill." I really think that this is raking into a dunghill, to produce this address to the Ambassador of the Emperor of Morocco; this address, which it is not pretended was ever seen, or read, or known by any one of these Trustees, or by any person who has been a recipient of Lady Hewley's bounty,—this is to be brought forward as showing that the Unitarians are mere Mahomedans, and that, therefore, I suppose, they ought to be put to the edge of the sword!

My Lords, the other great ground of charge against the Unitarians is the Improved Version of the Scripture. Now your Lordships need not be alarmed that I am about to enter into a defence of that Version; I abstain from at all engaging in that controversy. But, my Lords, I rest upon this, that that is not a document which can legitimately form any ingredient in your Lordships' judgment. It is not used in any congregation of Unitarians in the realm of England, it never has been so used, it has been disclaimed by them; they use the authorized version which has the sanction of public authority, and it is that version of the Scriptures which is referred to, when they say that they believe in the doctrines which the Scriptures teach. There are particular texts in controversy between them and the Church, as there are particular texts in contro-

versy among Churchmen themselves; there are particular verses, or there may be one or two chapters, the genuineness of which is doubted; the great body of Unitarians have not rejected the 1st chapter of Luke's gospel, although some have doubted its being genuine. But, my Lords, I believe that I am justified in saying that the great body of Churchmen, and of learned Churchmen, and of prelates of the Church of England, do reject those verses in the First Epistle of Saint John, the three heavenly witnesses; but for that reason, my Lord, is it at all pretended that those who doubt the genuineness of those verses are not sincere Christians, and do not believe that the Scriptures contain the revealed will of God? With regard to that New and Improved Version of the Scriptures, as it is called, there are only three Trustees that are at all connected with it out of the fourteen; there is one Grand Trustee and two Sub-Trustees; and how are they connected with it? Why, they are subscribers to a library in which it is to be found. My Lords, does that show that they believe in it? If a man is a subscriber to a library, in which there is a translation of the Koran, does that show that he is a Mahomedan? I believe, my Lords, that there are prelates, of undoubted orthodoxy, who have subscribed again and again for the sermons of heterodox divines; but does that show that they are heterodox, does that show that they are to be degraded, does that show that they are to lose the bishoprics which they adorn? With regard, therefore, to those three Trustees only, the one a Grand Trustee, and two Sub-Trustees, is it proved; and this his Honour the Vice-Chancellor is at great pains to say; he says, "All I can find is, that Mr. Wellbeloved was a subscriber;" and that applies only to three out of the fourteen who are removed; there are eleven who are removed who are not subscribers, who are not shown ever to have seen this Improved Version, who are not proved to have known its existence, and who have never given it the slightest countenance whatever; but because three out of fourteen have subscribed to this publication, it is supposed that this publication is a proof of the belief of those who never read it, and who are unconscious of its contents.

Well now, my Lords, with regard to other quotations, showing that Unitarians may be considered Christians, the explanation that has been given is this, that there is no such quotation; they say that all our quotations only prove that the authors of those works thought the tests were unnecessary, but that they all believed that the Trinitarian doctrine was essential to salvation, and that without a belief in the Godhead of our Saviour there could be no true Christian. My Lord, I will not go over those quotations again; I ask your Lordships to recollect them; but there are just one or two sentences to which I will beg your particular attention. Is that the interpretation that is to be put upon the quotation from Milton, in which he says, "What! are Lutherans, Calvinists, Anabaptists, *Socinians*, Arminians, no heretics? I answer, all these may have some errors, but are no heretics. Heresy is in the will and the choice professedly made against Scripture; error is against the will in misunderstanding the Scripture after all sincere endeavours to understand it rightly." My Lords, Socinians are herein included, and instead of their not being considered as Christians, it is even said that in the sense in which Milton thinks the term "heretic" ought to be used, they are not even to be considered as heretics.

Then I will just give your Lordship a sentence of Locke: "But he that believes one eternal, invisible God, his Lord and King, ceases thereby to be an Atheist; and he that believes Jesus to be the Messiah, his King, ordained by God, thereby becomes a Christian, is delivered from the powers of darkness, and is translated into the kingdom of the Son of God, is actually within the covenant of grace, and has that faith which shall be imputed to him for righteousness; and if he continues in his allegiance to this his king, shall receive the reward, eternal life." It is quite clear that Unitarians are included in that passage from Mr. Locke.

My Lords, Mr. Baxter, in his earlier writings, was certainly very intolerant,

but as he suffered, and as those of his sect suffered, from persecution, he was much softened in his latter days, and he was willing to save others from those penalties which had been inflicted upon himself. My Lord, even Baxter says, "It seems to me no heinous Socinian notion, which Chillingworth is blamed for, namely, let all men believe the Scripture, and that only, and endeavour to believe it in the true sense (and promise this), and require no more of others; and they shall find this not only a better, but the only means to suppress heresy and restore unity."

Again, my Lords, I will only give your Lordships one more sentence of that which I read, which is from a prelate of the Church of England: Bishop Watson says, "If different men, in carefully and conscientiously examining the Scriptures, should arrive at different conclusions, even on points of the last importance, we trust God will be merciful to him that is in error. We trust that he will pardon the Unitarian, if he be in error, because he has fallen into it from a dread of becoming an idolater, of giving that glory to another which he conceives to be due to God alone. If the worshipper of Jesus Christ be in an error, we trust that God will pardon his mistake, because he has fallen into it from a dread of disobeying what he conceives to be revealed concerning the nature of the Son, or commanded concerning the honor to be given him. Both are actuated by the same principle, the fear of God; and though that principle impels them into different roads, it is our hope and belief, that if they add to their faith charity, they will meet in heaven."

Now, my Lords, is it not much more probable that Lady Hewley was actuated by such sentiments as these, that she felt with Milton, and Locke, and Baxter, in his latter days, that all who believed in the divine mission of Jesus Christ might be considered Christians, and although they might err in doctrine, it might be hoped that, from the mercy of God, they might be saved?

Well then, my Lords, do not those quotations fully justify the sentiments that have been lately expressed respecting Unitarians? do not those quotations fully justify what was decided by Lord Brougham, and what was laid down as clear law by Lord Lyndhurst,—that the statutes imposing penalties being repealed, Unitarians are in the same situation with any other sect of Christians? Lord Brougham, when Lord Chancellor, by compelling Mr. Wellbeloved to answer that Interrogatory, clearly expressed his opinion that Unitarians are Christians, and that it was no offence to preach Unitarian doctrines. I have shown your Lordships that Lord Lyndhurst, in the speech that he made in defence of the Unitarian Marriage Bill, strongly inculcated the same doctrine, and expressed a clear and decided opinion upon the point; he then held the Great Seal of Great Britain, and was Keeper of the King's Conscience; that noble and learned Lord strongly supported the Unitarian Marriage Bill, was eager that the principle of it should be affirmed, expressed great apprehension lest on account of the near close of the session it should not pass during that session of Parliament, but was most earnest that the principle of it should be affirmed, made an able and eloquent speech in its defence, showed that all penalties against Unitarians were repealed, that they are to be considered as believing and meritorious Christians, and entitled in all respects to the same protection and encouragement with any other body.

Lord LYNDHURST.—I rather think that the Attorney-General is making a speech for me.

Lord BROUGHAM.—He says you made an able and eloquent speech.

Mr. ATTORNEY-GENERAL.—I read, before the noble and learned Lord came into the House, the very words which he made use of, concurring with the Bishop of Chester, now Bishop of London, in the opinion that that Bill should pass; I will hand the noble and learned Lord, with his permission, the volume of Hansard's Debates from which I quoted.

(*The book was handed to his Lordship.*)

Lord BROUGHAM.—A speech not in this Parliament?

Mr. ATTORNEY-GENERAL.—No, my Lord, in 1827; I read it only as a matter of history.

Lord LYNDHURST.—For what purpose was it used?

Mr. ATTORNEY-GENERAL.—To show the opinion of the Lord High Chancellor of Great Britain; I quoted Lord Brougham's decision to show the opinion of one Chancellor, and I read the speech of Lord Lyndhurst to show the opinion of another Chancellor.

Lord BROUGHAM.—The opinion of a judge is more certain than the opinion of a senator, but I do not mean to say that it is not his opinion.

Mr. ATTORNEY-GENERAL.—Your Lordship will find the law laid down here.

Lord BROUGHAM.—I have seen the law perverted as well as laid down.

Mr. ATTORNEY-GENERAL.—Your Lordship will see how it is there laid down, that they are a lawful body.

Lord BROUGHAM.—In reference to the point of law?

Mr. ATTORNEY-GENERAL.—Yes, my Lord.

Lord BROUGHAM.—That the illegality of denying the doctrine of the Trinity is gone?

Mr. ATTORNEY-GENERAL.—Yes, my Lord. I first relied very much upon the authority of Lord Brougham.

Lord BROUGHAM.—That was upon the exceptions to the answer?

Mr. ATTORNEY-GENERAL.—Yes, my Lord, there was an exception to the Interrogatory put to Mr. Wellbeloved, whether he did not preach Unitarian doctrines? he excepted to that; it was urged that he was not bound to answer, and Lord Brougham decided that he was; and would Lord Brougham have held that, if he was liable to a misdemeanour upon his answer?

Lord BROUGHAM.—That very point was mentioned by one of the Counsel, and I was of opinion, and am still, that he was bound to answer; but there is the authority, supposed to be a very high authority, of the late Chief Justice, Lord Tenterden, an *obiter dictum*.

Mr. ATTORNEY-GENERAL.—I have, my Lord, looked most diligently into the books, upon that subject.

Lord BROUGHAM.—So have I; I am quite of your opinion.

Mr. ATTORNEY-GENERAL.—I have looked into the books with regard to any decision by Lord Tenterden.

Lord BROUGHAM.—If you look at what passed from the Bench, upon the motion of Mr. Denman, then Common Serjeant, the party moves for a new trial; it was not Mr. Denman, but he was resisting it; the party, Waddington, moves for a rule to show cause why there should not be a new trial, on account of the misdirection of the learned Judge, and he represents Lord Tenterden to have said that; and that is the ground of his motion, as a mis-statement of the law. Lord Tenterden does not admit that he said it, and Mr. Justice Bayley clearly gives it to be understood that he relies upon it being a libel, as an indecorous statement of the doctrine, and not a serious statement of the doctrine.

Mr. ATTORNEY-GENERAL.—The fact appears upon the report: Waddington was indicted for words which it is shocking to repeat, that our Saviour was an impostor and a murderer; a juryman asked Lord Tenterden, "is it a libel now to deny the doctrine of the Trinity?" Lord Tenterden's answer was this, "It is a libel to apply such expressions as these to our Saviour."

Lord BROUGHAM.—It was not an answer to the question of the juror, but an answer suited to the case?

Mr. ATTORNEY-GENERAL.—Yes, my Lord; and in the King *v.* Carlile there is nothing to countenance the notion that dissenting from the doctrine of the Trinity was blasphemy.

Lord BROUGHAM.—I am quite with you upon that, as far as regards the books, and nobody can doubt it who reads the books; but the question did

not arise; the words were, not for examining soberly and respectfully, but reviling,—and everybody admits that will be a libel.

Mr. ATTORNEY-GENERAL.—Certainly, my Lord.

Lord BROUGHAM.—Just as it would be sedition to attack the government in a ribaldrous manner. But still I am confident that it was the opinion of Westminster Hall at the time, that Lord Tenterden held that doctrine; I have heard that.

Mr. ATTORNEY-GENERAL.—It must, my Lord, have been a misapprehension; that misapprehension may have arisen from the answer that he gave to the question of the juryman: a juryman asks, Is it lawful to impugn the doctrine of the Trinity? Lord Tenterden gives no answer to that question, but he says very properly, It is a libel to apply such epithets of opprobrium to the divine author of our religion.

Lord BROUGHAM.—Such epithets as the words in question?

Mr. ATTORNEY-GENERAL.—Yes, my Lord; but neither in that case, nor in any other, can I find the slightest ground for such a doctrine from Lord Tenterden, nor any Judge of the Court of King's Bench, and the only thing which savours of any sort of authority is that reserved opinion that Lord Eldon gives: Lord Eldon there says, he has an opinion, but he does not express what that is; and my argument was, that if he had expressed it in the most distinct terms, it would not have led to any serious doubt about the law, but led us to lament that so great a man should have been so misled by his religious zeal.

Then, my Lord, it only remains that I should very shortly refer to the effect of the Statutes, while they were in existence. Now it cannot be denied for a moment, that in 1704 and 1707 Unitarians were not tolerated, because they were not included in the Toleration Act, and by the 9th and 10th of William the Third, there were penalties expressly enacted against them; it therefore was unlawful to preach Unitarian doctrines in Lady Hewley's time. My Lords, if there had been a charity that was established in Lady Hewley's time for Unitarians then existing, the question would have arisen, what is the effect of the repeal of those Statutes? Now, in Bradshaw *v.* Tasker, which is in 2nd Mylne and Keen, page 223, it rather seems to have been the opinion of the Lord Chancellor that when such Acts are repealed, they are considered never to have been the law of the land, and that the same construction is to be put upon, and operation to be given to, deeds founding a charity, as if those Statutes never had had an existence. I might therefore call in aid that decision, if Lady Hewley's Charity had been intended for the Unitarians at the time that the Charity was founded; but, my Lords, I say no such thing; that was not her intention; I am therefore not bound to resort to the case of Bradshaw *v.* Tasker; I say that her object was that preachers, who should be tolerated by law for the time being, should be the proper recipients of her bounty, and that she did not intend that the law should be violated; she wished that her Trustees should keep within the limits of the law, but that with the expanding liberality of the law her bounty should expand. The effect is the same as if she, in so many words, had said, "I leave this for preachers dissenting from the Church of England, such as the law for the time being may tolerate." And I now have it upon the high authority of two noble and learned Lords, who have successively held the Great Seal, that Unitarians are now tolerated by the law of England; they properly therefore come within that class for whose assistance this Charity was founded. It is now in the discretion of the Trustees to select from those tolerated Christians any individuals that they think fit, as the proper recipients of this bounty. If they are not tolerated by law, then, as far as the Unitarians are concerned, this case is out of Court. It really does come to this, my Lords, with very great submission, and upon this I apprehend your Lordships' Decree will be founded,—Are they tolerated by law or not? Was Lord Brougham mistaken in his decision? Was Lord Lyndhurst

ten in the law that he laid down? Is it still a misdemeanour, is it still ictable offence, to entertain or to preach Unitarian doctrines? If it be en the Unitarians do not come within the scope of this Charity, because re not preachers of Christian doctrine tolerated by law; but if they are ed, then I humbly submit to your Lordships that they rest upon the foundation as Baptists or Presbyterians, or any other class of Christian iters.

Lords, to say that it never could be the intention of Lady Hewley, at iture time, that any person should participate in her bounty who was olerated at the time that she founded the Charity, seems to me to be untenable. If you were to look to her private sentiments, that would no means the result. You will look at her conduct, and you will see he supported the ejected ministers between Saint Bartholomew's day, and the time that the Act of Toleration passed after the Revolution. g that time, the clergymen that she supported were every Sunday vio- the law if they were preaching in a conventicle; and how, my Lords, be supposed that she meant that no one should ever, at any time, parti- in her bounty, unless that individual should be ready to subscribe all irty-nine Articles of the Church of England, except three and a part of th? Why, my Lords, this mode of reasoning would exclude from Lady y's bounty, not only Quakers but Separatists, because there is one of the es, the subscription to which was required by the Act of Toleration, and was required down to the 19th of George the Third, which says that it ful to take or to administer an oath. Well but, my Lords, the Sepa- say that it is unlawful to take or administer an oath; they are now le- l along with the Quakers and Moravians, and they may come into a of justice and decline to take an oath, and an affirmation is to be admi- d to them. Well, but those who entertained this doctrine in the time ly Hewley were not tolerated Christians; they could not comply with ndition upon which toleration was granted. When the 19th of George ird arrived, that subscription to the Thirty-nine Articles, one of which ed the lawfulness of oaths, was dispensed with, and then they came the category of tolerated Christian men, and then, I say, might, under Hewley's disposition, become participators in her bounty. The 19th of e the Third did a great deal, it expanded very much the circle within her Charity might be distributed; but still, until the 53rd of George the arrived, the Unitarians were not the fit objects of it; but when the 53rd rge the Third had passed, then the Unitarians were placed upon exactly me footing, the same relief was given to them as by the 19th of George hird had been given to persons who scrupled to subscribe to various of irty-nine Articles; and then, after the 53rd of George passed, the Uni- s were placed upon the same footing with other sects from whom dis- es had been removed.

herefore, my Lords, in every way you view it, comes to the question whether Unitarians are Christians. Mr. Knight Bruce now says that ry much laments the manner in which the Information is drawn; in information it is alleged that they are Christians; Mr. Knight Bruce ts that any such admission should be made; but, my Lords, will your hips not look to the admission that is made in the Information, and our Lordships listen to the disclaimer of that Information by the Coun- r the Relators? Is not this an argument which stops the mouth of elators, and disables them from contesting the Christianity of the De- nts? My Lords, it would have been in vain to deny that they are ians; they have been acknowledged as Christians in every age of the y of Christianity; they lamentably err upon one great or several great nes of our belief, but they are to be recognised as Christians, and if ians, then they come within the scope of Lady Hewley's bounty. If y Lords, although they do profess, in the language of his Honour the

Vice-Chancellor, what is commonly called Unitarian doctrines, they are not for that reason to be excluded from that bounty which the Foundress of this Charity provided for them.

My Lords, I have only now to make a few observations upon the omissions of the Decree. My learned friend Mr. Knight Bruce says, that it is perfect in all respects; he only laments that costs were given, and he laments that the Information called the Defendants Christians. But, my Lords, I apprehend that the Decree omits that which it ought to have included, and for that reason that it cannot stand in its present shape. Now your Lordships are aware that by the Decree all the Trustees are removed, the Master is to appoint fresh Trustees, and, more than that, there is a fund in Court amounting to about 28,000*l.*, and the Master is to propose a scheme for the disposal of that fund. Then, my Lords, if that is a perfect Decree, it must follow that it can be acted upon. How is the Master to act upon this Decree? He is told who are unfit to be Trustees of Lady Hewley's Charity—all who entertain Unitarian opinions or are of the Church of England; (I do not know for what cause, but these fourteen are declared to be unfit;) but there is not the slightest indication as to what shall be the test of those who are fit.

Now my learned friend contends that the Trustees ought necessarily to be those who are of the same opinions with Lady Hewley. Then, my Lord, I humbly conceive that there ought to have been a declaration in the Decree to that effect; the Court should have decreed that the Trustees to be appointed ought to be of the same religious faith with the Foundress of the Charity; then, after that, there ought to have been an inquiry directed as to what her opinions were upon faith, and what were her opinions respecting the discipline of the Church; and there ought to have been a direction to the Master that it was only Trustees of the same faith with her that ought to be appointed. Now, my Lord, what is the Master to do? Is he to appoint Independents? Well but, *ex hypothesi*, Independents are not of the same religious faith with Lady Hewley; Lady Hewley was a Presbyterian; her sect had been at bitter war with the Independents; they had suffered very much in the contest. Well, then, why should it be said that Independents are to be Trustees? If Independents are to be Trustees, are Anabaptists to be Trustees? That would surely be differing essentially from the docrine of Lady Hewley, if you were to look to her opinions and believe that she was a Presbyterian; because I believe that infant baptism is considered essential in the Presbyterian Churches; I believe that she would have looked with horror upon any person who would allow an individual to reach man's estate without submitting to that holy rite. Then who are to be appointed? That, my Lord, is left entirely in blank, and it is impossible for the Master to carry this Decree into effect.

Then, my Lords, again, who are to be recipients? It is said that those who entertain or preach what is commonly called Unitarian doctrines are not to be the recipients. Well, but who are? Must they all believe the same things with Lady Hewley, so much as she believed, and no more? If that be so, there ought to have been a declaration to that effect, and there ought to have been an inquiry whereby there might have been a sort of confession of the Hewleyan faith, which might be applied as a test, in all times to come, in the management of this Charity. If that really is the construction to be put upon this foundation, that the objects of the Charity who receive eleemosynary relief must be of the same faith with Lady Hewley, though she has merely said that they shall be godly persons,—if it be a breach of trust to administer any relief to any person who does not exactly entertain her opinions, again I say that there ought to have been a declaration to that effect, and an inquiry to ascertain what her opinions were.

My Lords, a decree for the management of a charity is to put an end to litigation, it is to enable the trustees to do their duty, it is to chalk out a line which they may safely and certainly pursue; is this Decree of that description? But then, says my learned friend Mr. Knight Bruce, that is not asked

on the part of the Relators; all that the Relators ask is, that the Unitarians shall be excluded: ay, my Lord, it is not asked by the Relators, because their great object was to get possession of the property in controversy; but then, my Lord, it is asked by the Trustees: your Lordships will recollect that one and all of the Trustees, by their answer, submit to act as the Court shall direct.

Lord LYNDHURST.—I do not think that anything was said about the form of the Decree before me; that was not touched; is any one here who was present when the argument was heard before me? I do not think that the objection was made as to the form of the Decree; it was not touched at all.

Mr. BLOWER.—Certainly not, my Lord.

Mr. SOLICITOR-GENERAL.—I argued the point before your Lordship, not as to the form of the Decree, but with respect to the removal of some of the Trustees, that there ought to be some inquiry as to what the faith of the parties was; I think I may state, according to my recollection, that was argued; but we have the notes and we will ascertain.

Lord LYNDHURST.—Yes, as to the removal of some of the Trustees, I think that was argued; so far I think I recollect; Mr. Heywood for instance.

Mr. SOLICITOR-GENERAL.—Mr. Heywood and Mr. Wood and Mr. Palmes; indeed, the removal of them generally.

Lord LYNDHURST.—But I do not think anything was said as to that part of the Decree which directed an inquiry.

Mr. ATTORNEY-GENERAL.—I should say, with the most humble and respectful deference, that it is my firm belief that if his Lordship's attention, when he affirmed this Decree, had been directed to this point, the Decree would not have stood as it now stands.

Lord LYNDHURST.—The only point argued before me, with the exception of that stated by the Solicitor-General, was, whether the Unitarians came within the scope of these Deeds*.

Mr. ATTORNEY-GENERAL.—My Lord, whatever had been his Lordship's opinion upon that question, I humbly apprehend that if his mind had been called to it, he must have drawn a distinction between the Trustees; that his Lordship would never have removed Mr. Palmes, because he was a member of the Church of England, from administering a Charity which is open to members of the Church of England; and I think that his Lordship, whatever opinion he had formed respecting the "godly preachers," or with regard to the class who are to receive eleemosynary relief, would not have decreed that the Trustees were to be excluded if they entertained Unitarian opinions.

My Lords, I have now concluded. I regret that I have occupied so much of your Lordships' time; but in a case of such magnitude, and which is to settle the law upon the subject, I think that I may be excused. My Lords, I rejoice exceedingly that your Lordships have summoned the Queen's Judges to assist you upon this occasion: if there be any doubt, my Lords, as to whether the private opinions of a person who executes a deed may be inquired into for the purpose of putting a construction upon that deed, your Lordships may have the opinion of the Queen's Judges upon that question; if there be any doubt, my Lords, as to whether Unitarians are now tolerated by law, your Lordships may have the opinion of the Queen's Judges upon that question; if there be any doubt as to whether, under a Deed of this sort, founding a charity, it is necessary that the trustees, the foundress being entirely silent upon that subject, should necessarily be of the same belief as the foundress, your Lordships may take the opinion of the Queen's Judges upon that question; if it be supposed that where there is a deed founding various

* The short-hand writer's notes of the hearing in the Court below were subsequently shown to Lord Lyndhurst; from which it appeared that the form of the Decree had been fully brought under his Lordship's consideration.

charities at the same time, and there are tests applied to one, that test is to be applied to all, your Lordships may consult the Queen's Judges upon that subject: and the learned Judges will tell your Lordships whether it be necessary that the Trustees, grand and sub, should be able to repeat Mr. Edward Bowles's Catechism.

My Lords, with this assistance, there can be no doubt that your Lordships will come to a determination which must be satisfactory to the parties and to the public. I cannot look forward to that decision without considerable anxiety. I feel that it might have a very lamentable consequence, if this attempt, which is made on the part of these Independent Relators, were to succeed; it might produce great religious discord and lead to great religious intolerance. I trust that your Lordships will be of opinion that the attempt which the Relators have made has entirely failed, that this Charity has not been applied to any purpose to which it was not legitimately applicable. And then, my Lords, these Relators, I hope, will "put on the whole armour of God." Let them combat those doctrines that they disapprove of; let them do so with Christian moderation and charity, but do not let them grasp at property, and, under the guise of this cupidity, pretend that they are promoting the cause of true religion.

LORD CHANCELLOR.—My Lords, it now remains for your Lordships to consider in what form it may be most convenient to submit to the consideration of the learned Judges the questions which arise in this very important Case. Your Lordships will be anxious to exhaust the subject, so far as the subject is capable of being exhausted, in the questions which are now to be referred to the opinion of the learned Judges. With that view, I submit to your Lordships several questions which it appears to me will go as far as the nature of the Case will enable your Lordships to go, in putting those points upon which alone you will require the opinion of the learned Judges,—there being some points in the Case which are not properly points of Law, which therefore must be necessarily reserved for your Lordships to consider,—being questions which arise with respect to the administration of the Charity, in the event of the questions being answered in a particular way.

My Lords, the questions I submit for the consideration of the learned Judges, are,

First.—Whether the extrinsic evidence adduced in this Cause, or what part of it, is admissible for the purpose of determining who are entitled, under the terms "Godly Preachers of Christ's Holy Gospel," "Godly persons," and the other descriptions contained in the Deeds of 1704 and 1707, to the benefit of Lady Hewley's bounty?

Secondly.—If such evidence be admissible, what description of ministers, congregations, and poor persons, are proper objects of the Trusts of those Deeds respectively?

Thirdly.—Whether, in putting a construction upon the Deed of 1704, any and which of the provisions of the Deed of 1707 may be referred to?

Fourthly.—Whether, upon the true construction of the Deed of 1704, ministers or preachers of what is commonly called Unitarian belief and doctrine, and their widows and members of their congregations, and persons of what are commonly called Unitarian belief and doctrine, are excluded from being objects of the charities of that Deed?

Fifthly.—The same question as to the Deed of 1707?

And *Sixthly.*—Whether such ministers, preachers, widows, and persons, are, in the present state of the law, incapable of partaking of such charities, or any and which of them?

Lord BROUGHAM.—My Lords, I entirely agree with my noble and learned friend, that these questions are proper questions to be submitted to the consideration of the learned Judges, and that they exhaust the subject, without touching upon the matters which are of equitable consideration and ought not to be put to the learned Judges. I, at one time, had a little doubt

upon the question which has been discussed by the learned Attorney-General in his reply, as to the criminality or non-criminality, in the eye of the law, of denying decently and decorously the doctrine of the Trinity: for as to any ribaldry, nobody can doubt the law upon that, and the Attorney-General has not himself disputed it ; but upon the whole, I think that is unnecessary to be put as a separate question, and if unnecessary, it is better to avoid putting it.

LORD CHANCELLOR.—The last question embraces it: Whether such ministers, preachers, widows, and persons, are, in the present state of the law, incapable of partaking of such charities?

Lord BROUGHAM.—I think that covers it, and it is better than putting it separately.

Lord LYNDHURST.—(*To the Counsel.*)—The learned Judges will take time to consider what answer they shall give to the questions.

THE END.

Printed by Richard and John E. Taylor, Red Lion Court, Fleet Street.

3 2044 914 839 393

The borrower must return this item on or before the last date stamped below. If another user places a recall for this item, the borrower will be notified of the need for an earlier return.

*Non-receipt of overdue notices does **not** exempt the borrower from overdue fines.*

Harvard College Widener Library
Cambridge, MA 02138 617-495-2413

WIDENER
BOOK DUE
MAR 3 1 2005
CANCELLED

Please handle with care.
Thank you for helping to preserve library collections at Harvard.